

**CITY OF SAN JOSE**

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**NOTICE OF ENVIRONMENTAL APPEAL**

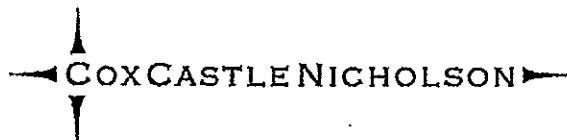
TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER		RECEIPT # _____	
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)		AMOUNT _____	
		DATE _____	
		BY _____	
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION: Planning Commission 5/19/2010 Certification of the FSEIR for the Baseball Stadium Project in the Diridon/Arena Area (File No. PP05-214)			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): Failure to comply with the requirements of the California Environmental Quality Act, Pub. Res. Code section 21000 et seq., for the reasons set forth in Silicon Valley Sports and Entertainment's three comment letters on the NOP, DSEIR and First Amendment to SEIR, dated 12/17/2009, 3/29/2010 and 5/18/2010 respectively, attached hereto as Exhibits A, B and C.			
PERSON FILING APPEAL			
NAME Misty Macias, Assistant to Donald Gralnek		DAYTIME TELEPHONE ( 408 ) 999-6801	
ADDRESS HP Pavilion, 525 West Santa Clara Street	CITY San Jose	STATE CA	ZIP CODE 95113
SIGNATURE <i>Misty Macias</i>		DATE May 24, 2010	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME Donald Gralnek, Executive Vice President and General Counsel, Silicon Valley Sports and Entertainment, LLC			
ADDRESS HP Pavilion, 525 West Santa Clara Street	CITY San Jose	STATE CA	ZIP CODE 95113
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PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE DEVELOPMENT SERVICES CENTER, CITY HALL.

**EXHIBIT A**

**Silicon Valley Sports & Entertainment, LLC  
Comment Letter dated December 17, 2009**

(attached)



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R. Clark Morrison  
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December 17, 2009

File No. 60516

VIA E-MAIL AND U.S. MAIL

Mr. Akoni Daniels  
City of San Jose  
Department of Planning, Building, and Code Enforcement  
200 East Santa Clara Street  
San Jose, California 95113

Re: Notice of Preparation of a Supplemental Environmental Impact Report for the  
Baseball Stadium in the Diridon/Arena Area

Dear Akoni:

On behalf of San Jose Arena Management LLC ("Arena Management"), the manager of the HP Pavilion, we respectfully submit the following comments with respect to the Notice of Preparation ("NOP") of a Supplemental Environmental Impact Report ("SEIR") for the Baseball Stadium ("Baseball Stadium") in the Diridon/Arena Area.

Arena Management appreciates its positive working relationship with the City of San Jose (the "City") and the San Jose Redevelopment Agency ("Agency"). As you know, HP Pavilion is an integral component of the downtown experience, and provides significant economic benefits to the City and Agency. Through our collaboration, we have collectively implemented a variety of programs, including the Transportation Parking Management Plan ("HP Pavilion TPMP"), to provide efficient and convenient access and parking for HP Pavilion, minimize traffic congestion on surrounding roadways, and minimize traffic and parking intrusion into surrounding neighborhoods. As you know, the parties have been successful in achieving these goals and the associated economic benefits to the City and Agency, but continuing to do so in the face of growing congestion on surrounding transportation facilities will be an ongoing challenge, and one that will require continued collaboration and creativity, as well as the implementation of mitigation measures.

In addition, as acknowledged in the 2006 EIR, the City and Arena Management are party to an agreement (the "HP Pavilion Agreement") through which the City is committed to make sufficient parking available near HP Pavilion. The HP Pavilion Agreement requires the City to pursue best efforts to ensure that at least 6,350 off-site parking spaces are available to HP Pavilion patrons within ½ mile of HP Pavilion, of which at least 3,175 spaces should be within 1/3 mile of HP Pavilion. Like the HP Pavilion TPMP, the parties have been successful in implementing the HP Pavilion Agreement to date, but doing so in the context of the Baseball Stadium and other area growth will be a challenge.

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Arena Management is mindful of the opportunity for additional enhancement of the downtown experience, and additional economic benefits to the City and Agency, if the City is successful in securing a Major League Baseball franchise and developing the Baseball Stadium. Arena Management also has a responsibility to identify adverse impacts that the Baseball Stadium may cause to HP Pavilion, so that the City and Agency can fully analyze and mitigate such impacts. As such, Arena Management previously submitted comments on the 2006 Draft and 2007 Final Environmental Impact Report for the Baseball Stadium (the "2006 EIR"), which comments are incorporated herein by this reference and enclosed for your review.

As was the case in 2006-2007, Arena Management remains extremely concerned about the potentially significant, adverse transportation and parking impacts of the Baseball Stadium on the surrounding transportation network and on HP Pavilion. During simultaneous events at the Baseball Stadium and HP Pavilion, we believe that patrons of both venues may encounter severe congestion and/or have extreme difficulty finding parking. The SEIR should thoroughly address the potentially significant, adverse impacts of the Baseball Stadium project on transportation facilities, and resultant impacts to HP Pavilion. To the extent such significant impacts are identified, the SEIR should identify feasible mitigation measures to reduce those impacts to a less than significant level, and should ensure that timely (*i.e.*, prior to opening of the Baseball Stadium) implementation of such measures is required as a condition of approval of the Baseball Stadium project. As indicated in prior comments by Arena Management, the 2006 EIR failed to adequately analyze and mitigate these impacts. According to the Notice of Preparation of the Draft SEIR dated November 17, 2009 (the "NOP") (but received by Arena Management on November 23, 2009), the City intends to update the traffic analysis to reflect proposed changes in the Baseball Stadium project and to correct erroneous traffic data. Pursuant to CEQA, the SEIR also must be updated to reflect other changed circumstances and new information since the 2006 EIR. Arena Management therefore respectfully requests that SEIR itself address the issues identified in this letter.

#### 1. Project Description

The NOP indicates that, in lieu of the proposed parking structure on the south side of Park Avenue identified in the 2006 EIR, parking for the Baseball Stadium would be provided either in existing parking facilities or in a new parking structure to be constructed in one of the two locations shown in the NOP (at Montgomery/Autumn Streets or various configurations at HP Pavilion). The location of parking facilities to serve the Baseball Stadium will determine trip distribution and assignment, which in turn will affect impact analysis. As such, the SEIR will need to include "variants" in the traffic analysis, all at a project level of detail, to analyze how transportation (traffic, parking, pedestrian, transit, etc.) and associated impacts will differ depending upon the location of parking.

In addressing the feasibility of each of the parking options, particularly in the event of simultaneous events at HP Pavilion, the Baseball Stadium and the Arena Green, the SEIR also must address potential use of these same parking facilities by other future users, such as BART and high speed rail customers. Notably, the proposed parking location at Montgomery/Autumn already has been identified as a potential parking site for BART. If this location is included as an option in the SEIR, the SEIR also must demonstrate the feasibility of Baseball Stadium parking at this location

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in light of its prior identification as a potential BART parking facility, including assessing the actual parking capacity available to each transit users and event attendees in a shared use scenario. Furthermore, the HP Pavilion parking structure options need to be analyzed in close coordination with Arena Management, to ensure that the access points, configurations and other aspects of the facilities do not adversely affect HP Pavilion operations or violate the HP Pavilion Agreement.

## 2. Transportation Analysis

### *Scope of Analysis*

The NOP indicates that the traffic analysis will be updated to correct erroneous traffic data included in the 2006 EIR. In fact, a more extensive update of the transportation analysis as a whole (including not only traffic, but also parking, transit and pedestrian impacts) will be required. Pursuant to the CEQA Guidelines, this update should reflect not only the corrected traffic data, but also changes in the Baseball Stadium project and other new information and changed circumstances since the certification of the 2006 EIR.

The revised transportation analysis should address changes in the Baseball Stadium project including, without limitation the current proposal for 36,000 seats, the possible repositioning of the Baseball Stadium and associated narrowing of Park Avenue, the new alternative parking locations (as discussed above), and the newly proposed reconfiguration of the intersection of S. Autumn and S. Montgomery streets with Park Avenue. This analysis should include an assessment of the feasibility of these changes, including the need for right-of-way acquisition and the availability of funding.

The revised transportation analysis also should address new information and changed circumstances, including not only the corrected traffic data referenced in the NOP, but also updated traffic counts, the City's decision to allow outdoor events at the Arena Green (which could accommodate up to 16,000 persons and occur simultaneously with events at HP Pavilion and the Baseball Stadium), and the possible location of BART and high speed rail parking in the vicinity. In addition, the parking analysis should include not only the options identified in the NOP, but also should include all options for expanded on-site parking for HP Pavilion, which Arena Management staff shared with City staff in December 2009, including options for parking on a portion of the Autumn/Montgomery streets block.

### *Adequacy of Impact and Mitigation Analysis*

In conjunction with the revision of the transportation analysis, the City has an opportunity to address other inadequacies in the analysis contained in the 2006 EIR, as well as update the analysis to reflect other new information and changed circumstances. In particular, the SEIR should address the following issues, many of which are addressed in more detail in Arena Management's prior comment letters, enclosed herein:

- The SEIR should address the possibility of up to 19 simultaneous sold out events at HP Pavilion and the Baseball Stadium, as well as now at Arena Green. The conclusory statement

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in the 2006 EIR that events would not likely be sold out is unsupported by any evidence. Unless the City intends to restrict event capacity at the Baseball Stadium and Arena Green during HP Pavilion events to ensure that impacts do not occur, the SEIR should analyze the possible impacts of simultaneous sold out events.

- The SEIR should make logical, technically sound assumptions regarding trip distribution during simultaneous events. As noted in the prior comments, the assumption that 90 percent of Baseball Stadium attendees will divert to alternate routes during simultaneous events at HP Pavilion is illogical and technically unsupportable.

- The SEIR should assess the feasibility of the possible steps identified in the 2006 EIR for reserving parking to HP Pavilion customers during simultaneous events. As noted, the HP Pavilion Agreement requires the City to make 6,350 parking spaces available for HP Pavilion patrons within ½ mile of HP Pavilion, but currently only the on-site spaces are reserved (and even that reservation is questionable under the newly proposed option of providing Baseball Stadium parking at HP Pavilion). Absent further analysis and imposition of a specific, feasible mitigation measures to ensure that adequate HP Pavilion parking is maintained, the SEIR cannot conclude that parking impacts will not result, nor that the HP Pavilion Agreement will not be violated. If parking spaces cannot feasibly be reserved, the trip distribution patterns for Baseball Stadium trips identified in the 2006 EIR would need to be revised accordingly.

- The SEIR should address the feasibility of the Autumn Street reconfigurations assumed in the 2006 EIR, including the need for right-of-way acquisition and the availability of funding, as well as the City's ability to commit to completing Autumn Street improvements between Colman and Park Avenues prior to opening of the Baseball Stadium

- The SEIR should address the feasibility of the mitigation measures identified in the 2006 EIR to resolve LOS F conditions at Autumn Street/West San Fernando Street and Autumn Street/Park Avenue. These intersections are important access routes to HP Pavilion. Even if these intersections are exempt from the City's LOS policy, the requirements of the HP Pavilion Agreement and the HP Pavilion TPMP render high levels of congestion at these intersections an impact nonetheless. For example, the HP Pavilion TPMP establishes the City's "strong commitment to provide a positive transportation experience for HP Pavilion patrons", including experiences "involving roadway capacity, sufficient parking and pedestrian facilities, transit services and overall convenience."

- The SEIR should eliminate the assumption that the parking facilities at 10 Almaden and 160 W. Santa Clara will be available for HP Pavilion events, or provide evidence to support the assumption of their availability, given that the operators of these two facilities previously have indicated that they do not desire to serve HP Pavilion events and therefore are excluded from the HP Pavilion TPMP (notwithstanding the City's assertion that they served the San Jose Grand Prix). In addition, the SEIR should ensure the use of accurate data regarding the number of spaces in the Park Center Plaza III, Market Street/San Pedro and Riverpark garages, all of which were assumed in 2006 EIR to have more spaces than indicated in the HP Pavilion TPMP.

- The SEIR should make technically sound assumptions regarding the distance that people are willing to walk to attend an event at HP Pavilion or the Baseball Stadium. The 2006 EIR assumption that people would walk up to  $\frac{3}{4}$  mile exceeds published guidelines, as well as the  $\frac{1}{2}$  mile radius used in the HP Pavilion Agreement. The assertion in the 2006 EIR that people will not come, or will carpool or use alternate modes, is not supported by the evidence, and moreover if true could result in additional transit impacts not adequately addressed in the 2006 EIR. If these unsupported assumptions do not prove true, however, the results may include illegal parking in neighborhoods and parking conflicts with other area land uses, with resultant impacts that should be addressed in the SEIR.

- The SEIR should make technically sound assumptions regarding parking lot occupancy. Multiple parking resource documents indicate that 90 percent occupancy should be the maximum assumed, not 100 percent as assumed in the 2006 EIR. The 2006 EIR assumption that parking operators will achieve higher occupancies is not supported by the evidence.

- The SEIR analysis of the option, identified in the NOP of providing a new parking structure at HP Pavilion, must include adequate analysis and conditions/mitigation measures to ensure compliance with the HP Pavilion Agreement, which provides that any use of HP Pavilion on-site parking by non-HP Pavilion users shall not interfere with the Sharks or other HP Pavilion events.

### 3. Other Analysis

The NOP indicates that the SEIR will address only traffic, global climate change, alternatives and other mandatory EIR sections, and that an Initial Study checklist will be included in the SEIR. The NOP further indicates that the City has not identified any other new or substantially more severe impacts that would require further analysis (and in fact that traffic and global warming impacts will not be new or substantially more severe). The changes in the Baseball Stadium project, combined with the revised traffic analysis, however, are likely to require more extensive revisions to the 2006 EIR. First, as indicated above, the transportation analysis as a whole (including not only traffic, but also parking, transit and pedestrian impacts) will need to be revised to reflect the changes in the Baseball Stadium project and the revised traffic analysis. Second, the revised traffic analysis is likely to trigger the need to update other analyses that are based on traffic data, including without limitation land use, noise and air quality analysis. If the City has already completed this analysis, as suggested in the NOP, then the City should reissue the NOP with the Initial Study attached now, so that the public can be timely informed of the City's conclusions, along with the substantial evidence that supports them, and have an opportunity to provide additional information early enough in the process that it actually can be incorporated into the SEIR. The City would incur substantial additional expense and delay if the Draft SEIR had to be recirculated to address comments on the Initial Study that could have been submitted prior to publication of the Draft SEIR had the City made the analysis, which the NOP suggests is completed, available with the NOP. Absent disclosure of the City's conclusions and supporting evidence, the public cannot meaningfully comment on the adequacy of the proposed scope of the SEIR.

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We appreciate the opportunity to comment on the NOP and look forward to reviewing a Draft EIR that adequately addresses the issues identified herein. In the meantime, please add us to the distribution list for all City notices, publications and other correspondence or updates regarding the SEIR and the Baseball Project.

Respectfully submitted,

COX, CASTLE & NICHOLSON, LLP

By R. Clark Morrison  
R. Clark Morrison

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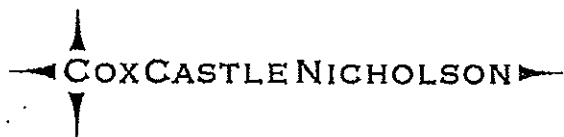
cc: Don Gralnek, Esq.



**EXHIBIT B**

**Silicon Valley Sports & Entertainment, LLC  
Comment Letter dated March 29, 2010**

(attached)



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R. Clark Morrison  
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March 29, 2010

File No. 60516

VIA E-MAIL, FACSIMILE AND HAND DELIVERY

Mr. Darryl Boyd  
City of San Jose  
Department of Planning, Building, and Code Enforcement  
200 East Santa Clara Street  
San Jose, California 95113

Re: Comments on Draft Supplemental Environmental Impact Report for the Baseball Stadium in the Diridon/Arena Area

Dear Mr. Boyd:

On behalf of Silicon Valley Sports and Entertainment, a California limited liability company (together with its affiliate, San Jose Arena Management, LLC, collectively referred to herein as "Silicon Valley Sports"), the manager of the HP Pavilion, we submit the following comments with respect to the Draft Supplemental Environmental Impact Report ("DSEIR") for the Baseball Stadium ("Baseball Stadium") in the Diridon/Arena Area. Please note that the traffic engineering and other technical analysis contained herein was prepared by Wenck Associates, Inc. ("Wenck"), a nationally recognized expert in the transportation field.<sup>1</sup>

HP Pavilion hosts an average of 170 events each year, welcoming some 1.5 million patrons. Silicon Valley Sports is firmly committed to providing a first class experience to HP Pavilion patrons, whether for professional ice hockey or other entertainment events, as well as to implementing measures to protect our neighbors from intrusion into their neighborhoods. The patrons and neighbors of HP Pavilion expect and deserve that the City of San Jose (the "City") and the San Jose Redevelopment Agency (the "Agency") will not approve projects that will undermine their experiences, and instead will fully analyze, identify, and mitigate the impacts of new development Downtown. (The City and the Agency sometimes are referred to collectively herein as "San Jose" for convenience.)

Being an integral component of the Downtown experience, HP Pavilion provides significant economic benefits to San Jose. Silicon Valley Sports and San Jose have successfully invested in and implemented a variety of programs, including the HP Pavilion Transportation and Parking Management Plan ("HP Pavilion TPMP"), to provide efficient and convenient access and

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<sup>1</sup> James Benshoof, the leader of the Wenck team, is a Registered Professional Traffic Engineer in California and has over 20 years of experience performing traffic engineering work in the City of San Jose.

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parking for HP Pavilion, minimize traffic congestion on surrounding roadways, and minimize traffic and parking intrusion into surrounding neighborhoods. Continuing this success will be an ongoing challenge that will require the cooperation of future Downtown projects, such as the Baseball Stadium, the planned High Speed Rail project (the "HSR Project"), the Silicon Valley Rapid Transit Corridor BART project (the "BART Project") and future land uses proposed in the Diridon Station Area Plan (the "Diridon Plan"). Among other things, Silicon Valley Sports expects that San Jose will require the Baseball Stadium to implement an effective Transportation and Parking Management Plan ("Stadium TPMP") that complements the HP Pavilion TPMP, and to provide sufficient transportation infrastructure to support the efficacy of that plan. Without an effective Stadium TPMP and transportation improvements, the Baseball Stadium will erode the effectiveness of the HP Pavilion TPMP and aggravate neighborhood impacts.

As described in the DSEIR, San Jose plans to locate a major traffic generating use that demands almost 14,000 parking spaces in an already congested area, and to require *no* physical roadway improvements and potentially *no* new parking spaces. Instead, San Jose intends to resolve the myriad transportation problems caused by the Baseball Stadium with a TPMP "that *may identify non-physical* improvements to serve stadium traffic" (emphasis added), but San Jose has not defined performance standards or specific requirements for the TPMP, has not circulated it for public review, and has not even identified any binding mechanism to require its implementation. As described below, the DSEIR must be revised to fully disclose the significant transportation impacts of the Baseball Stadium and to identify feasible means to avoid or mitigate those impacts. The revised DSEIR must be recirculated so that decision-makers, the public and Silicon Valley Sports are afforded a meaningful opportunity to understand and comment on the impacts of the Baseball Stadium.

#### SUMMARY

As indicated in our December 17, 2009, comment letter on the Notice of Preparation ("NOI") of the DSEIR, Silicon Valley Sports is extremely concerned about the potentially significant, adverse transportation impacts of the Baseball Stadium on the surrounding transportation network and on HP Pavilion. Silicon Valley Sports requested a full analysis of these impacts, and feasible measures to avoid or mitigate them, in the DSEIR.

In order to comply with the California Environmental Quality Act ("CEQA"), the DSEIR must provide a good faith, reasoned analysis of the Baseball Stadium proposal, including identifying the significant, adverse transportation impacts of the Baseball Stadium and the measures required to avoid or mitigate those impacts. The DSEIR must do the following: clearly describe the project, consider all relevant data, analyze the full range of potential impacts, support its analysis with substantial evidence, and present that evidence in an accurate and transparent manner. The analysis must be both robust and accessible, so that decision-makers and the public are provided a meaningful opportunity to understand and comment on the impacts of the Baseball Stadium and the feasible means to avoid or mitigate those impacts. As detailed herein, had the DSEIR complied with these CEQA requirements, it would have disclosed that the Baseball Stadium will cause significant traffic impacts (including severe congestion at intersections in the vicinity of the

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Baseball Stadium), significant parking impacts (including demand in excess of supply during simultaneous events and an even greater shortfall under cumulative conditions), significant impacts to pedestrian safety and emergency vehicle access (including unsafe pedestrian/traffic interaction and potentially inadequate emergency response times), and significant cumulative transportation impacts.

Instead of providing the good faith analysis requested in our NOP comments and required by CEQA, the DSEIR appears to engage in a result-oriented approach, designing its assumptions, methodologies and analysis in a way that avoids the identification of significant impacts, thereby avoiding the need for costly mitigation measures such as actual physical transportation network improvements or parking structures. This manipulation of data and analysis to mislead readers and conceal impacts is evident throughout the document. For example, as detailed herein, the DSEIR: chooses a traffic scenario for analysis that is not representative of the highest traffic volumes and therefore understates traffic impacts; artificially constrains the significance criteria for traffic and parking impacts to preclude the identification of *any* impacts to roadways; understates the frequency and severity of traffic impacts by omitting any quantification of various traffic sources; assumes without supporting evidence the effective implementation of various measures to avoid traffic and parking impacts; makes numerous technically unsupported assumptions regarding parking supply in order to create an appearance that supply will exceed demand; excludes probable projects from the cumulative analysis and completely omits any analysis of cumulative parking, safety and transit impacts; and omits any analysis of construction traffic impacts. As a result of these and other manipulated assumptions, methodologies and analyses, the DSEIR conceals the true transportation impacts of the Baseball Stadium, and fails to identify feasible measures to avoid or mitigate those impacts.

Specifically, as detailed in the DSEIR comments set forth below,

The DSEIR includes so many project variants and analysis scenarios that it is impossible for the reader to have a meaningful understanding of the impacts of the Baseball Stadium. (See Part I)

The DSEIR conceals the actual traffic impacts of the Baseball Stadium by artificially constraining its analysis to the 5:00 to 6:00 PM, single event scenario, even though overall (*i.e.*, with the Baseball Stadium) traffic volumes are higher in the 6:00 to 7:00 PM and simultaneous event scenarios. Accepted traffic engineering practice requires analysis of the highest overall volumes. (See Part II.A)

The DSEIR uses illusory traffic level of service ("LOS") significance criteria and, as a result, fails to disclose the significant traffic impacts of the Baseball Stadium. The DSEIR further fails to disclose the significant traffic impacts of the proposed narrowing of Park Avenue, which will negatively affect access to HP Pavilion even without an event at the Baseball Stadium. (See Part II.B)

The DSEIR understates the frequency and severity of traffic impacts during simultaneous events by omitting any quantification of foreseeable secondary events at HP Pavilion and the

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Baseball Stadium and foreseeable simultaneous events at other Downtown venues such as the Arena Green. (See Part II.C)

The DSEIR assumes that traffic impacts will be avoided by future implementation of a Stadium TPMP and future extension of Autumn Street, but includes no mechanism to ensure that these measures are effectively and timely implemented. (See Part II.D)

The DSEIR understates traffic impacts by failing to analyze the intersection of The Alameda and Race Street. (See Part II.E)

The DSEIR understates traffic impacts by omitting any analysis of construction traffic impacts. (See Part II.F)

The DSEIR inexplicably redefines the parking significance criterion of "inadequate parking" used in the 2006 EIR to mean that parking impacts are significant only if other Downtown businesses are rendered "non-viable," a standard that has no technical or evidentiary basis. (See Part III.A)

The DSEIR overstates the available parking supply by making numerous unsupported technical assumptions, such as excessive walking distances, inclusion of spaces that are not in fact available, and failure to account for inefficiencies that reduce effective supply by 10 to 15 percent. (See Part III.B)

The DSEIR omits any analysis of parking impacts during weekday games, when parking use by the Downtown employee base reduces available Downtown parking supply to a much lower level than the 75 percent availability assumed in the DSEIR for evening games. (See Part III.C)

The DSEIR concludes without analysis that traffic congestion will not result in significant pedestrian safety impacts, and fails to even address the impact of traffic congestion on emergency vehicle response times. (See Part IV)

The DSEIR understates cumulative traffic impacts by failing to include probable future projects such as the HSR Project, and omits *any* analysis of cumulative parking, safety and transit impacts. (See Parts III.D and V).

As a result of the often misleading or absent assumptions and analysis contained in the DSEIR, decision-makers, the public and Silicon Valley Sports all are denied a meaningful opportunity to understand and comment on the true impacts of the Baseball Stadium and feasible means of avoiding or mitigating those impacts. Ultimately, Downtown will suffer significant adverse transportation impacts, and no one will benefit from the concealment of those impacts in the DSEIR.

In order to comply with CEQA, at a minimum, the DSEIR must be revised as follows to correct the foregoing deficiencies, and must be recirculated for public review:

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- The DSEIR must be revised to provide a stable, finite and accurate project description, with analysis that clearly demarcates what variables are assumed. In order to do so, the DSEIR must clearly describe the difference in impacts and mitigation measures for each project permutation possible among the 12 project variants and four analysis scenarios.

- The DSEIR traffic analysis must be revised to identify significant LOS impacts at Downtown and Congestion Management Program ("CMP") intersections in accordance with both the City's and the CMP Guidelines' LOS thresholds; disclose significant traffic impacts during the 6:00 to 7:00 PM hour; disclose significant traffic impacts during simultaneous events (including secondary events); quantify traffic resulting from patrons searching for parking; provide substantial evidence that measures assumed to avoid impacts, such as the Stadium TPMP and the Autumn Street extension, will be effective; analyze impacts at the intersection of The Alameda and Race Street; and analyze construction traffic impacts.

- The DSEIR parking analysis must be revised to set forth a threshold of significance that conforms with professional standards; revise the unsupported technical parking assumptions to be accurate and consistent with industry practice; and include cumulative parking analysis.

- The DSEIR must be revised to include an analysis, in accordance with accepted traffic engineering standards, of the impacts of traffic congestion on pedestrian safety and delay and emergency vehicle access.

- The DSEIR cumulative transportation analysis must be revised to disclose significant LOS impacts under cumulative conditions; account for all probable future projects likely to contribute to significant cumulative transportation impacts, including the HSR Project, the BART Project and the Diridon Plan; and analyze the contribution of the Baseball Stadium to significant cumulative impacts related to parking, transit, emergency access and pedestrian safety.

- For each significant impact identified by the revised analysis, the DSEIR must identify feasible measures to avoid or mitigate such impact. These measures should include, without limitation, a prohibition of events (baseball or secondary events) at the Baseball Stadium simultaneous with hockey games, to the extent feasible<sup>2</sup>; a comprehensive, effective and enforceable Stadium TPMP that establishes performance standards or specific measures that must be implemented; and physical improvements to the transportation network where necessary to mitigate impacts or ensure effective implementation of the TPMPs.

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<sup>2</sup> Notably, the San Jose Ballpark Supplemental Traffic Impact Analysis, February 10, 2010 ("TIA") suggests that "the following actions will be undertaken as part of the TPMP to minimize the effects of increased traffic and pedestrian demand on transportation facilities and surrounding neighborhoods" during simultaneous events: "minimize same day event occurrence"; "staggered start/end times for events"; and "monthly coordination with event venues." The DSEIR, however, does not mention these measures and it is unclear if the City intends to require them.

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## COMMENTS ON DSEIR

Identification of the significant environmental effects of a proposed project is one of the primary purposes of CEQA and is necessary to implement CEQA's stated public policy that an agency should not approve a project if there are feasible mitigation measures or project alternatives available to reduce or avoid significant environmental impacts. Pub. Res. Code §§ 21002, 21002.1(a). An EIR must include a sufficient degree of analysis to provide decision-makers with the information needed to make an intelligent judgment concerning a project's environmental impacts. CEQA Guidelines § 15151; *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4<sup>th</sup> 342, 256.

While Silicon Valley Sports is cognizant of the importance of the Baseball Stadium to San Jose, San Jose must comply with CEQA. Silicon Valley Sports submits the following comments on the DSEIR, and hereby requests that the DSEIR be revised to address the inadequacies detailed herein, and recirculated for meaningful public comment. The revised DSEIR must adequately identify the significant transportation impacts of the Baseball Stadium and identify feasible measures to avoid or mitigate those impacts.

I. The DSEIR Fails to Provide an Accurate and Stable Project Description, as Required by CEQA, Because It Includes Too Many Project Variants and Analysis Scenarios.

One of the most fundamental requirements of CEQA is that an EIR contain a clear project description that enables informative, meaningful analysis of project impacts. Case law articulates that "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. However, a curtailed, enigmatic or unstable project description draws a red herring across the path of public input." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4<sup>th</sup> 645, 655. "Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives." *Id.*

The DSEIR fails to provide an accurate, stable and finite project description. The number of project variants and analysis scenarios makes it impossible for any reader to understand the true impacts of the Baseball Stadium. The project description includes two seating capacity variants, three parking variants, and two Park Avenue variants (narrowed and un-narrowed), for a total of 12 possible project permutations. The transportation analysis then describes two event scenarios (single and simultaneous) and two peak hour scenarios (5:00 to 6:00 PM and 6:00 to 7:00 PM), for a total of four possible analysis permutations. Taken together, that results in 48 possible permutations and the DSEIR does not clearly demarcate which variables are assumed in each discussion. The result is an "enigmatic and unstable project description" that precludes meaningful analysis of the impacts of the Baseball Stadium.

The DSEIR should be revised to provide an accurate, stable and finite project

description, with analysis that clearly demarcates what variables are assumed. To the extent that the impacts of certain permutations are bracketed by the discussion of other permutations, the DSEIR should clearly explain the basis for such conclusion. Anything less "draws a red herring across the path of public input," depriving decision-makers, the public and Silicon Valley Sports of a meaningful opportunity to "balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives."

II. The DSEIR Understates Traffic Impacts (and Fails to Identify Traffic Mitigation) Because It Uses an Analysis Scenario That Is Not Representative of Maximum Overall Traffic Volumes, Uses Illusory Significance Criteria, Relies on Unsupported Assumptions Regarding Measures to Avoid Impacts, Omits Analysis of Critical Intersection, and Omits Any Analysis of Construction Impacts.

Due to its proximity to the Baseball Stadium, HP Pavilion relies on the same basic street network for ingress and egress. As a result, unmitigated traffic congestion on the street network surrounding the Baseball Stadium will adversely affect ingress and egress to and from HP Pavilion. The DSEIR must identify these significant impacts, as well as feasible means to mitigate them, and if mitigation is not feasible, must disclose that these impacts are significant and unavoidable.

As described below, the DSEIR understates traffic impacts because it analyzes only the 5:00 to 6:00 PM single event scenario even though traffic volumes will be higher during the 6:00 to 7:00 PM and simultaneous event scenarios (Part II.A); uses illusory significance criteria (Part II.B); understates the impacts of simultaneous events by omitting foreseeable project trips (Part II.C); relies on unsupported assumptions regarding measures to avoid or mitigate traffic impacts (Part II.D); fails to analyze impacts at The Alameda and Race Street (Part II.E); and omits any analysis of construction traffic impacts (Part II.F).

A. The DSEIR conceals traffic impacts by limiting its analysis to the 5:00 to 6:00 PM, single event scenario, thereby understating overall traffic volumes.

The DSEIR conceals traffic impacts by limiting its analysis of traffic impacts to the 5:00 to 6:00 pm, single event scenario, when in fact greater impacts would occur during the 6:00 to 7:00 PM single and simultaneous event scenarios. Unlike the 2006 Draft EIR and 2007 Final EIR for the Baseball Stadium (the "2006 EIR"), the DSEIR asserts that the 6:00 to 7:00 PM single and simultaneous event scenarios presented in the TIA are discussed for "informational" purposes only, and "are not required to be analyzed under the [City Transportation Policy] and would not result in impacts that require mitigation in the SEIR." DSEIR, p. 56. This artificial constraint on the analysis of traffic impacts, inexplicably introduced in the DSEIR, misleads the public by concealing impacts that would occur during the true peak scenarios.

1. *The DSEIR limits its analysis to the 5:00 to 6:00 PM time period even though traffic volumes with the Baseball Stadium are higher during the 6:00 to 7:00 PM time period.*



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The 2006 EIR analyzed traffic impacts during *both* the 5:00 to 6:00 PM time period and the 6:00 to 7:00 PM time period, acknowledging that "the *overall* intersection volume with the project is expected to be greatest during the hour immediately proceeding a week night game (between 6:00 and 7:00 PM)." DSEIR, P. 96 (emphasis added). The DSEIR acknowledges that "the 6:00-7:00 PM time period would experience the greatest impact from stadium traffic." DSEIR, p. 56. As indicated in the TIA, 59 percent of Baseball Stadium project traffic would occur in the 6:00 to 7:00 PM time period. TIA, pgs. 20, 23, Tables 6 and 7. Nevertheless, the DSEIR constrains its assessment of significant traffic impacts to the 5:00 to 6:00 PM time period, on the basis that this time period is the "peak travel hour" as defined by the City Transportation Policy. *Id.* This constraint appears to be based on the unsupported premise that the hour with the highest level of background traffic is the hour of highest impact. This premise, however, is contrary to established transportation policy and the data contained in the TIA.

The DSEIR's suggestion that the City Transportation Policy dictates use of a 5:00 to 6:00 PM peak period is inaccurate. In fact, the City Transportation Policy defines the term "peak hour" by reference to the one hour of the day (AM or PM) "having the highest number of trips." In the case of a project, such as the Baseball Stadium, that generates a disproportionately large number of trips outside of the peak hour for background traffic, it is possible that the "peak hour" for overall (*i.e.*, "with project") conditions may be the peak hour for project traffic, not the peak hour for background traffic. Consistent with this possibility, the Santa Clara Valley Transportation Authority ("VTA") CMP specifically recommends that additional hours be analyzed when appropriate.<sup>3</sup>

As summarized in Table II.1 (prepared by Wenck), the data in the TIA disclose that, for many intersections, the overall number of trips for the single event scenario actually is higher during the 6:00 to 7:00 PM hour than during the 5:00 to 6:00 PM hour.

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<sup>3</sup> The CMP states: "The TIA Report must document the project's trip generation for both the AM and PM peak periods to justify the peak period(s) analyzed in the TIA. The Lead Agency may require that additional periods be analyzed, if this is deemed appropriate. For example, the Lead Agency could require analysis of midday peak hour or weekend peak hours. Based on engineering, judgment, additional analysis of midday or weekend peak periods may be required."

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Table II.1

Total Volume Entering Intersections, 5:00 to 6:00 PM versus 6:00 to 7:00 PM

Intersection	Volume 5-6 pm with 16k stadium, single event	Volume 6-7 pm with 16k stadium, single event
NB SR 87 Ramps and Julian Street	3817	2980
NB SR 87 Ramp and Santa Clara Street	3361	2107
Bird Avenue and SB I-280 Ramps	3992	3807
Autumn Street and Santa Clara Street	3341	1672
Woz Way and NB SR 87	1032	1008
Autumn Street and San Fernando Street	2402	262
Woz Way and Auzerais Avenue	990	976
Delmas Avenue and Park Avenue	2405	2107
Montgomery Street and Park Avenue	3079	3118
Woz Way and Park Avenue	2174	1983
Woz Way and San Carlos Street	2056	1978
Montgomery Street and Santa Clara Street	2394	2905
Montgomery St and San Fernando Street	523	515
Lincoln Avenue and San Carlos Street	2559	2104
Notes: 1) Table depicts volumes for scenario with 1,200-space parking structure; results are the same for scenario with 1,300 spaces on HP Pavilion site; one more intersection has greater volume from 6-7 p.m. under scenario with no parking structure. 2) Shaded cells indicate intersections for which volume is greater from 6-7 p.m. than 5-6 p.m. For two of the five highlighted intersections, the volume from 6-7 p.m. is more than 20% greater than from 5-6 p.m.		

The suggestion in the DSEIR that traffic congestion occurring in the 6:00 to 7:00 PM timeframe by definition cannot be significant (because it occurs outside of the peak hour for background traffic) lacks any rational foundation. It is not reasonable to suggest that impacts occurring from maximum overall traffic volumes *cannot* be significant.

The failure of the DSEIR to analyze traffic impacts during the hour of maximum overall traffic volumes is not excused simply because the data showing volumes during the 6:00 to 7:00 PM time period are included in the TIA and summarized in the DSEIR for "informational" purposes. Case law establishes that a city cannot rely on technical appendices to satisfy its obligation under CEQA to provide a good faith reasoned analysis of the full scope of impacts. As stated by the Supreme Court in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, "information scattered here and there in an EIR appendices or a report buried in an appendix cannot substitute for a good faith reasoned analysis." (2007) 40 Cal.4<sup>th</sup> 412, 442 (internal citations omitted) ("*Vineyard*"); see also, *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4<sup>th</sup> 645, 659; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.

2. *The DSEIR limits its analysis to the single event scenario even though traffic volumes with the Baseball Stadium are higher in the simultaneous event scenario.*

The 2006 EIR analyzed traffic impacts during *both* the single event and the simultaneous event scenario. In contrast, the DSEIR asserts that that the simultaneous event scenario is "not required to be analyzed under the [City Transportation Policy] and would not result in impacts that require mitigation in the SEIR." DSEIR, p. 56.

The DSEIR's suggestion that the City Transportation Policy excuses analysis of the simultaneous event scenario is misleading. In fact, the City Transportation Policy is silent with respect to single versus simultaneous events.

As summarized in Table II.2 (prepared by Wenck), the data in the TIA disclose that, for all but one intersection, the overall number of trips for the simultaneous event scenario is greater than the single event scenario.

Table II.2  
Total Volume Entering Intersections, Single versus Simultaneous Event Scenario

Intersection	6-7 pm with 36k stadium, single event	6-7 pm with 36k stadium, simultaneous events
NB SR 87 Ramps and Julian Street	2980	2627
NB SR 87 Ramp and Santa Clara Street	4107	4455
Bird Avenue and SB I-280 Ramps	3807	4026
Autumn Street and Santa Clara Street	3674	3640
Woz Way and NB SR 87	1008	1123
Autumn Street and San Fernando Street	2627	2676
Woz Way and Auzerais Avenue	976	1231
Delmas Avenue and Park Avenue	2107	2527
Montgomery Street and Park Avenue	3118	3011
Woz Way and Park Avenue	1983	2130
Woz Way and San Carlos Street	1978	2152
Montgomery Street and Santa Clara Street	2905	3960
Montgomery St and San Fernando Street	515	6071
Lincoln Avenue and San Carlos Street	2104	2676

Notes:  
1) Table depicts volumes for scenario with 36,000 seats and 1,200-space parking structure; though the volume numbers change with the other two parking alternatives, a similar relationship exists between volumes under the single and simultaneous event conditions.  
2) With 32,000 seats, the volume numbers are lower, but a similar relationship exists between volumes under the single and simultaneous event conditions.  
3) Under the simultaneous event condition, volumes account for assumption in DSEIR that 65 to 90 percent of Baseball Stadium trips that would use northbound Bird Avenue and Autumn Street under the single event scenario would divert to other routes. No substantial evidence is provided to support that assumption. The volumes at the following intersections would be much higher with simultaneous events if such a high portion of baseball trips do not divert to other routes: Bird Avenue/SB I-280 ramps, Autumn Street/Santa Clara Street, Autumn Street/San Fernando Street, and Montgomery Street/Park Avenue.

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The suggestion in the DSEIR that traffic congestion occurring during simultaneous events cannot be significant lacks any rational foundation. It is not reasonable to suggest that impacts occurring from maximum overall volumes *cannot* be significant. As noted above, this deficiency is not excused simply because the data showing the LOS impacts of the Baseball Stadium in the simultaneous event scenario are included in the TIA and summarized in the DSEIR for "informational" purposes.

In summary, by artificially constraining its analysis to the 5:00 to 6:00 PM, single event scenario, the DSEIR fails to identify, and assess feasible means to avoid or mitigate, impacts that occur when the highest overall volumes occur (*i.e.*, the 6:00 to 7:00 PM and simultaneous event scenarios). This change in approach between the 2006 EIR and the DSEIR is unsupported by the technical data and appears to have no purpose other than to conceal the true impacts of the Baseball Stadium (which are addressed in Part II.C.3 below) and avoid the requirement to avoid or mitigate those impacts. The DSEIR must be revised to include an analysis of traffic impacts during the 6:00 to 7:00 PM and simultaneous event scenarios, and to identify feasible measures to avoid or mitigate those impacts.

B. The DSEIR uses illusory significance criteria and, as a result, fails to disclose the significant traffic impacts of the Baseball Stadium or identify mitigation.

In order to assess the significance of impacts, the CEQA Guidelines recommend that lead agencies adopt significance criteria. While the DSEIR includes two traffic significance criteria, further review reveals that both of these criteria are illusory because the DSEIR does not in fact apply them to assess impacts in each of the traffic analysis scenarios.

Consistent with CEQA's guidance, the DSEIR identifies two significance criteria for traffic impacts (referred to respectively herein as the "City LOS Threshold" and the "CMP LOS Threshold"):

(1) **City of San Jose Definition of Significant Intersection Impacts.** The Baseball Stadium is said to create a significant impact on traffic at a study intersection in the City of San Jose if for either peak hour:

- The level of service at the intersection degrades from an acceptable LOS D or better under background conditions to an unacceptable LOS E or F under project conditions,  
*or*
- The level of service at the intersection is an unacceptable LOS E or F under background conditions and the addition of project trips causes both the critical-movement delay at the intersection to increase by four or more seconds and the demand-to-capacity ratio (v/c) to increase by .01 or more.

(2) **CMP Definition of Significant Intersection Impacts.** A CMP Intersection is out of conformance with the acceptable LOS standard when the level of service falls below LOS E. For intersections determined to have been at LOS F under existing and background conditions, a project is said to impact the intersection if both:

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- The addition of the project traffic increases the average control delay for critical movements by four or more sections, *and*
- Project traffic increases the critical v/c value by 0.01 or more.

DSEIR, pp. 39, 45. As detailed below, however, the inclusion of these significance criteria in the DSEIR is misleading because the DSEIR fails to apply them to Downtown or CMP intersections in all of the analysis scenarios.

1. *The DSEIR does not identify any traffic impacts to Downtown or CMP intersections, because it fails to apply its stated traffic significance criteria in all of the analysis scenarios.*

The 2006 EIR applied the City LOS Threshold and the CMP LOS Threshold to traffic volumes in all three analysis scenarios identified in the 2006 EIR: the 5:00 to 6:00 PM single event scenario; the 6:00 to 7:00 PM single event scenario, and the 6:00 to 7:00 PM simultaneous event scenario. The 2006 EIR identified significant traffic impacts where the thresholds were exceeded and identified feasible mitigation for those impacts. In contrast, the DSEIR fails to apply the City LOS Threshold in *any* of the analysis scenarios, and as a result does not identify any traffic impacts to Downtown intersections, or measures to avoid or mitigate those impacts. In addition, the DSEIR makes a number of unsupported assumptions without which there also likely would be impacts to additional Downtown intersections under the City LOS Threshold, as well as to CMP intersections under the CMP LOS Threshold.

Wenck applied the significance criteria to traffic volumes occurring during each of the three traffic scenarios and identified numerous, undisclosed traffic impacts from the Baseball Stadium. During the 6:00 to 7:00 PM, single event scenario, data in the TIA reveals that impacts occur at three local intersections under the City LOS Threshold, as indicated in Table II.3.

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Table II.3  
 Local LOS Impacts  
 6:00 to 7:00 PM, Single-Event Scenario

Intersection	Background LOS and Average Vehicle Delay (sec.)	LOS and Delay with 32,000 Seals (delay ranges for different parking scenarios)	LOS and Delay with 36,000 Seals (delay ranges for different parking scenarios)
S. Autumn St./W. San Fernando St.	B (11.0)	F (135.2 – 160.0)	F (148.3 – 174.7)
Delmas Ave./Park Ave.	C (25.8)	F (157.4 – 184.2)	F (187.9 – 217.2)
S. Autumn St./Park Ave.	C (34.6)	F (143.8 – 178.6)	F (145.3 – 179.6)
Notes: (1) Results are from Tables 10 and 11 in TIA. (2) The results presented in Tables 10 and 11 are premised on multiple assumptions, which include: (a) Peak hour factor of 1.0. (b) Optimizing green times differently for each intersection and each scenario for volumes and roadway geometrics, without regard to uniformity of green times for major movements. (c) Expectation that widened crosswalks will solve LOS and delay problems, without analyzing impacts on pedestrian capacity and safety. (3) Assumption (2)(a) above is not consistent with the existing peak hour factor of about 0.80 during the hour of 6-7 p.m. at the Park Avenue and San Carlos Street intersections on Autumn Street/Bird Avenue. Assumption (2)(b) above is inconsistent with the need to provide progressive flow for major traffic movements. No substantial evidence is provided to justify above assumption (2)(c). (4) If different assumptions were applied, it is likely that more intersections would exceed the City LOS Threshold, and it also is likely that one or more CMP intersections would exceed the CMP LOS Threshold, particularly the Bird Ave./W. San Carlos St. intersection.			

During the simultaneous event scenario, data in the TIA reveals that impacts occur at four local intersections under the City LOS Threshold, as indicated in Table II.4.

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**Table II.4**  
**Local LOS Impacts**  
**Simultaneous Event Scenario**

Intersection	Background LOS and Average Vehicle Delay (sec)	LOS and Delay with 32,000 Seats (delay ranges for different parking scenarios) w/ No Improvements	LOS and Delay with 36,000 Seats (delay ranges for different parking scenarios) w/ No Improvements
S. Autumn St./W. San Fernando St.	B (11.8)	F (218.3 – 251.9)	F (235.9 – 270.9)
Delmas Ave./Park Ave.	C (26.7)	F (293.0 – 330.7)	F (333.7 – 373.8)
S. Autumn St./Park Ave.	C (34.5)	F (506.1 – 626.8)	F (511.3 – 631.1)
Delmas Ave./W. San Fernando St.	C (22.9)	E (69.1 – 71.3)	E (68.4 – 70.5)
<p>Notes:</p> <p>1) Results are from Tables 12 and 13 in TIA.</p> <p>2) The results presented in Tables 12 and 13 reflecting LOS with TIA recommended improvements are premised on multiple assumptions, which include:</p> <ul style="list-style-type: none"> <li>(a) Peak hour factor of 1.0.</li> <li>(b) Optimizing green times differently for each intersection and each scenario for volumes and roadway geometrics, without regard to uniformity of green times for major movements</li> <li>(c) Expectation that widened crosswalks will solve LOS and delay problems, without analyzing impacts on pedestrian capacity and safety.</li> <li>(d) Expectation, depending on parking scenario, that 65 to 90 percent of the baseball trips using northbound Bird Ave. and Autumn St. under single event condition would divert to other routes.</li> </ul> <p>3) Assumption (2)(a) above is not consistent with the existing peak hour factor of about 0.80 during the hour of 6-7 p.m. at the Park Avenue and San Carlos Street intersections on Autumn Street/Bird Avenue. Assumption (2)(b) above is inconsistent with the need to provide progressive flow for major traffic movements. No substantial evidence is provided to justify above assumptions (2)(c) or (2)(d).</p> <p>4) If different assumptions were applied, it is likely that more intersections would exceed the City's LOS threshold, and it also is likely that one or more CMP intersections would exceed the CMP threshold, particularly the Bird Ave./W. San Carlos St. intersection.</p>			

Although the TIA purports that these intersections might be restored to LOS D through "potential improvements" (a conclusion that is not based on any substantial evidence), the DSEIR fails to identify *any* of these significant traffic impacts or to identify the proposed improvements as mitigation measures. Instead, the TIA merely suggests that "these improvements will be reevaluated with the completion of the Traffic and Parking Management Plan (TPMP) that *may* identify *non-physical* improvements to serve stadium traffic as part of the traffic control plan.<sup>4</sup> TIA at pgs. 32-33.

With respect to the City LOS Threshold, the 2006 EIR applied this significance criterion to all three analysis scenarios, notwithstanding its acknowledgment that intersections located in the Downtown Core Area are exempt from the City's General Plan LOS threshold pursuant to the City of San Jose Transportation Policy (City Council Policy 5-3) (the "City

<sup>4</sup> As addressed in Part II.D.1 below, absent a requirement that the Stadium TPMP include these measures and evidence to support the assumed effectiveness of the Stadium TPMP, the Stadium TPMP is an illusory solution.

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Transportation Policy”). In contrast, the DSEIR does not apply the City LOS Threshold to Downtown intersections under *any* scenario, instead arguing that, because the City Transportation Policy exempts Downtown intersections from LOS standards and from mitigation, this criterion does not apply.

Only one of two results is possible: either (a) the City LOS Threshold is not in fact a significance criterion for Downtown intersections, in which case there is no significance criterion at all for Downtown intersections, so of course there can be no impact, and the DSEIR has misled the public by including an inapplicable significance criterion as a means to essentially define away the possibility of an impact; or (b) the City LOS Threshold is in fact a significance criterion for CEQA purposes (notwithstanding the exemption for planning purposes), in which case the DSEIR fails to disclose significant impacts at Downtown intersections where project traffic triggers the City LOS Threshold, and to identify feasible means to avoid or mitigate those impacts.

With respect to the CMP LOS Threshold, the DEIR does not apply this significance criterion in the 6:00 to 7:00 PM or simultaneous event scenarios. The data in the TIA does not disclose any significant impacts to CMP intersections pursuant to the CMP LOS Thresholds in these scenarios. This result, however, is based on a variety of assumptions that are not supported by substantial evidence. For example, the TIA (i) assumes a peak hour factor of 1.0, (ii) optimizes green times differently for each intersection and each scenario for volumes and roadway geometrics, without regard to uniformity of green times for major movements, (iii) assumes that widened crosswalks will solve LOS and delay problems, without analyzing impacts on pedestrian capacity and safety, and (iv) assumes, depending on parking scenario, that 65 to 90 percent of the baseball trips using northbound Bird Avenue and Autumn Street under the simultaneous event condition would divert to other routes. If reasonable assumptions were applied, it is likely that traffic LOS would exceed the CMP LOS Threshold at one or more intersections, particularly with respect to the intersection at Bird Avenue and West San Carlos Street.

In summary, by concluding that there is no significant impact to Downtown intersections despite data in the TIA demonstrating that LOS with the Baseball Stadium will trigger the City LOS Threshold (and that, with corrected assumptions, the Baseball Stadium likely would trigger the CMP LOS Threshold), the DSEIR is misleading and inadequate. As noted above, this deficiency is not excused simply because the data showing the LOS impacts of the Baseball Stadium are included in the appendices to the TIA and summarized for “informational” purposes in the DSEIR. The DSEIR’s inclusion of illusory significance criteria that it fails to apply not only violates the City’s duty to undertake a good faith reasoned analysis, but it also deprives decision-makers, the public and Silicon Valley Sports of a meaningful opportunity to evaluate and comment on the significant impacts of the Baseball Stadium. The DSEIR must be revised to apply both the City LOS Threshold and the CMP LOS Threshold to all three analysis scenarios, to



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identify significant traffic impacts where Baseball Stadium traffic exceeds those thresholds, and to identify feasible means to avoid or mitigate those impacts.<sup>5</sup>

2. *The DSEIR understates traffic impacts by failing to disclose the LOS impacts of the proposed narrowing of Park Avenue.*

The TIA includes an evaluation of the proposed narrowing of Park Avenue between McEvoy Street to Josefa Street, and Autumn Street/Bird Avenue from north of Park Avenue through San Carlos Street. As shown in Figure 6 of the TIA, the narrowing would eliminate two lanes in each direction on Park Avenue and Autumn Street through the intersection of these streets and would eliminate one through lane in each direction on Bird Avenue at San Carlos Street. According to analysis by Wenck, the narrowing at the Autumn Street and Park Avenue intersection would reduce the capacity of this intersection by approximately 40 percent. This reduced capacity will significantly and adversely impact access to HP Pavilion even when *no* events are occurring at the Baseball Stadium. The DSEIR acknowledges that the narrowing would have a significant unavoidable impact on congestion through regional screenlines and roadways. DSEIR, p. 69. The DSEIR, however, fails to identify the significant LOS impacts associated with this proposed narrowing, instead misleadingly suggesting that the narrowing "would have little or no effect on the intersection level of service". *Id.* As indicated in Table II.5 below (prepared by Wenck), the data in the TIA in fact reveal that the narrowing would cause significant impacts (based on the City LOS Threshold) at the intersection of Autumn Street and Park Avenue.

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<sup>5</sup> If mitigation is infeasible, for example because of mitigation exemption in the City Transportation Policy, the DSEIR must disclose the basis for this determination and the impacts must be identified as significant and unavoidable. See CEQA Guidelines §§ 15126.2(b), 15126.4(a)(5).

**Table II.5**  
**Significant LOS Impacts from Park Avenue and Autumn Street Narrowing**

Scenario	LOS and Average Vehicle Delay (sec.) without Narrowing	LOS and Average Vehicle Delay (sec.) with Narrowing	Negative Impacts Caused by Narrowing of Intersection
36,000 seats, 6-7 p.m., single event	F (179.6)	F (400.6)	LOS F without narrowing becomes much worse with narrowing due to 123% increase in delay.
36,000 seats, 6-7 p.m., simultaneous events	F (631.1)	F (1036.3)	LOS F without narrowing becomes much worse with narrowing due to 64% increase in delay.
Note: Table depicts results for scenario with 1,200-space parking structure; for the other parking scenarios, the LOS results are the same, and the delay values are very similar			

Moreover, with the narrowing, the overall delays are greatly increased over the non-narrowed scenario. These delays will significantly and adversely impact access to HP Pavilion. The DSEIR does not address any of these impacts, nor does it describe any measures to avoid or mitigate these impacts. As a result, decision-makers, the public and Silicon Valley Sports are denied a meaningful opportunity to review and comment on the full scope of traffic impacts of the Baseball Stadium.

C. The DSEIR understates the frequency and severity of traffic impacts during simultaneous events by omitting foreseeable project trips.

The DSEIR understates the frequency and severity of traffic impacts during simultaneous events by failing to quantify traffic resulting from patrons searching for parking (Part II.C.1) and failing to disclose the frequency and severity of simultaneous secondary events (Part II.C.2). If these foreseeable project trips were included, project traffic volumes would increase, resulting in even greater LOS impacts than identified in Part II.B above.

1. *The DSEIR understates the severity of traffic impacts during simultaneous events by failing to quantify traffic resulting from patrons searching for parking.*

The DSEIR acknowledges that, as a result of a shortage of proximate parking in the simultaneous events scenario (see Part III below), "fans seeking parking would drive throughout Downtown seeking the closest available parking, which would cause some additional congestion on

those Downtown streets and intersections used to access parking garages.” See DSEIR, p. 65. Nonetheless, neither the DSEIR nor the TIA make any attempt to quantify the number of cars that will be circling Downtown streets looking for parking, nor do they attempt to quantify the LOS impact of this additional congestion.<sup>6</sup> Because of this omission, project traffic volumes, and as a result traffic impacts, are understated.

2. *The DSEIR understates the frequency and severity of traffic impacts during simultaneous events by failing to disclose and quantify traffic from foreseeable simultaneous events.*

a. The DSEIR does not assess impacts from simultaneous secondary events.

The DSEIR misleads the public by understating the frequency of simultaneous events because it does not address the possibility of secondary events other than baseball and hockey (e.g., concerts, etc.) at HP Pavilion and the Baseball Stadium. The DSEIR acknowledges that, due to the overlap in baseball and hockey seasons, the Baseball Stadium project “could result in approximately an 8-week period of some potential simultaneous events at the HP Pavilion and the proposed ballpark.” DSEIR, p. 31. This statement is misleading because it is common practice for stadia to host secondary events outside of the season of their home sports team(s). It is foreseeable that such events will occur at HP Pavilion simultaneous with either baseball or secondary events at the Baseball Stadium, and conversely that such events will occur at the Baseball Stadium simultaneous with either hockey or secondary events at HP Pavilion. In fact, on average, there are approximately 19 events (hockey and secondary events) at HP Pavilion during the Major League Baseball season. Likewise, the Baseball Stadium is likely to host secondary events during the National Hockey League Season. Moreover, both venues could host secondary events simultaneously at any time of year. The DSEIR fails to account for these foreseeable simultaneous secondary events. Thus, even the “informational” simultaneous event data presented in the DSEIR understates the frequency of the occurrence of the traffic impacts of the simultaneous event scenario.

b. The DSEIR does not assess impacts from simultaneous events at other Downtown venues.

The DSEIR does not quantify traffic associated with reasonably foreseeable events at other Downtown venues, such as the Arena Green, occurring simultaneously with events at HP Pavilion and the Baseball Stadium.<sup>7</sup> The DSEIR omits this analysis despite the fact that the San Jose Downtown Strategy 2000 Final EIR and the TIA both state that “it is a desired outcome ... for the

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<sup>6</sup> Instead, the DSEIR assumes that this additional congestion “will be addressed through ‘dynamic wayfinding’ (currently in operation) to direct fans to available parking and through [a] Traffic Parking Management Plan (TPMP).” DSEIR, p. 65. Yet the DSEIR does not provide any substantial evidence that these measures will be effective to mitigate the impact of patrons circling looking for parking. See Part II.D.1 below.

<sup>7</sup> In 2010, more than 30 large events are scheduled to occur during the Major League Baseball season at Arena Green. See [www.grpg.org/Calendar.shtml](http://www.grpg.org/Calendar.shtml)

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Downtown to host multiple events, festivals, and cultural activities, *some of which will occur concurrently with baseball and/or Pavilion events.*" TIA, p. 13 (emphasis added). As a result the DSEIR fails to, disclose, or address feasible means to avoid or mitigate, significant transportation impacts from this foreseeable simultaneous event scenario.

In summary, the "informational" discussion of simultaneous events in the DSEIR and TIA understates the frequency and severity of traffic impacts during simultaneous events by omitting: quantification of trips generated by patrons searching for parking, disclosure of the number of simultaneous secondary events at HP Pavilion and the Baseball Stadium; and disclosure and quantification of foreseeable events at other Downtown venues. These omissions mislead decision-makers and the public, denying them a reasonable opportunity to comment on the true impacts of the Baseball Stadium and feasible measures to avoid or mitigate those impacts. The DSEIR must be revised to identify and quantify trips generated by patrons searching for parking, the number of simultaneous secondary events at HP Pavilion and the Baseball Stadium, and disclosure and quantification of foreseeable events at other Downtown venues. The DSEIR must identify impacts resulting when these additional trips are included in the simultaneous event traffic analysis scenario and feasible measures to avoid or mitigate such impacts.

D. The DSEIR identifies measures to avoid impacts that are not supported by substantial evidence.

The DSEIR assumes that a future Stadium TPMP (Part II.D) and a future extension of Autumn Street (Part II.D.2) will reduce project traffic impacts. These assumptions are not supported by substantial evidence. Either the City must impose enforceable conditions to ensure that these measures are effectively implemented, or the City must revise the DSEIR to remove these unsupported assumptions.

1. *The DSEIR's reliance on a future Stadium TPMP to reduce impacts is not supported by substantial evidence.*

The DSEIR frequently relies on the proposed Stadium TPMP to conclude that the Baseball Stadium will not have significant impacts. The Stadium TPMP, or similar forms of traffic management, are proposed by the DSEIR in order to (i) meet the City's contractual obligations to HP Pavilion regarding parking, (ii) manage traffic from events at other Downtown venues, (iii) manage the flow of circulating drivers searching for parking, and (iv) "improve operational deficiencies" without the need for physical improvements to intersections with LOS failures. In every instance, however, the DSEIR provides no substantial evidence demonstrating that the Stadium TPMP actually will minimize impacts to acceptable levels.

First, TPMPs only work if there is adequate underlying transportation infrastructure (e.g., roadways, intersections, parking lots, etc.) to accommodate anticipated traffic. TPMPs build off of this infrastructure foundation, managing it to its most efficient and effective potential. TPMPs are not a substitute for physical improvements that are required to maintain adequate, safe and effective transportation facilities. TPMPs cannot be assumed to be effective absent adequate

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underlying infrastructure. The DSEIR fails to provide any substantial evidence that adequate infrastructure is in place to ensure that the Stadium TPMP will be effective when needed.

Second, the DSEIR does not identify the required elements of the Stadium TPMP or establish any performance standards that the Stadium TPMP will be required to achieve. This approach amounts to impermissible deferral of mitigation, in violation of CEQA. *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4<sup>th</sup> 889, 915 ("Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.") Absent a description of the required elements or performance standards for the TPMP, it is impossible to assess or measure the likely effectiveness of the TPMP.

The DSEIR does list a number of program components that "may" be included in the Stadium TPMP.<sup>8</sup> Inexplicably, however, the TIA specifies that the Stadium TPMP only "may" identify *non-physical* improvements to service stadium traffic," again evidencing the City's goal of avoiding costly physical improvements. TIA, p. 32 (emphasis added). Instead, the "improvement measures" that "may" be included in the Stadium TPMP consist solely of non-physical improvements such as signal timing modifications, turn restrictions and signage. It is unlikely that these minimal (albeit inexpensive) measures could mitigate the impacts of trips generated by the stadium. During the arrival peak hour, the TIA indicates the volume of trips to the stadium would be 7,416 vehicles with 32,000 seats and 8,271 vehicles with 3,600 seats. These trips would be added to an already congested roadway network, and the DSEIR provides no substantial evidence that the referenced non-physical improvements would resolve the negative impacts.

Third, the DSEIR does not account for the potential environmental impacts associated with the potential "improvement measures" as required by CEQA. CEQA Guidelines § 15126.4(a)(1)(D). For example, the DSEIR explains that in order to reduce Baseball Stadium traffic impacts during simultaneous events, the Stadium TPMP may include "[l]ane configuration adjustments and turn restrictions" at Downtown intersections, as well as the placement of "temporary barricades at neighborhood street entrances" to prevent parking intrusion into adjacent neighborhoods. Yet there is no substantial evidence in the record demonstrating that these program components of the Stadium TPMP were ever factored into the traffic analysis.

The DSEIR understates traffic and parking impacts by asserting that the Stadium TPMP will address a variety of traffic and parking problems, without ensuring that adequate underlying infrastructure is in place to support the TPMP, without specifying the required elements of, or performance standards for, the Stadium TPMP, and without analyzing the impacts of the "improvement measures" identified for possible inclusion in the Stadium TPMP.

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<sup>8</sup> The TIA provides greater detail on the components of the TPMP that would be required to achieve the "mitigated intersection levels of service" described in the TIA. TIA, p.68. As noted in Part II above, however, the DSEIR does not identify any LOS impacts and therefore does not impose any "mitigation" for LOS impacts. As a result, it is unclear whether the City intends to require the Stadium TPMP to include these components.

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As a result, decision-makers, the public and Silicon Valley Sports are denied a meaningful opportunity to review and comment on the effectiveness of the Stadium TPMP.

2. *The DSEIR's reliance on the future extension of Autumn Street to accommodate traffic is not supported by substantial evidence.*

The TIA assumes, as part of background conditions, that the extension of Autumn Street to Coleman Avenue, north of HP Pavilion, is completed. TIA, p. 3. This assumption is not supported by substantial evidence, given that the extension has not been fully funded, nor has the City acquired the necessary right-of-way. Moreover, the DSEIR includes no assurances that this assumed improvement will be funded and constructed prior to operation of the Baseball Stadium. If the DSEIR is going to assume timely completion of this key improvement, the DSEIR must be revised to include commitments to ensure that the full Autumn Street extension will be completed prior to opening of the Baseball Stadium. Alternatively, the DSEIR must be revised to include analysis of traffic conditions without this improvement.

In summary, the DSEIR understates the traffic impacts of the Baseball Stadium by using an analysis scenario that is not representative of maximum overall traffic volumes, using illusory significance criteria and relying on unsupported assumptions regarding measures to avoid transportation impacts. These errors and omissions evidence the result-oriented approach of the DSEIR, designed to avoid the identification of significant impacts and the resultant obligation to mitigate. In doing so, the DSEIR denies decision-makers, the public and Silicon Valley Sports a reasonable opportunity to review and comment on the true traffic impacts of the Baseball Stadium.

- E. The DSEIR understates impacts by failing to analyze project impacts at the intersection of The Alameda and Race Street.

The DSEIR recognizes that the Baseball Stadium has the potential to significantly affect Meridian Avenue and The Alameda. Figure IV.A-1 in the DSEIR indicates that the intersections studied for potential impacts include: The Alameda and Hedding Street; The Alameda and West Taylor Street; Meridian Avenue and San Carlos Street; and San Carlos Street and Lincoln Avenue. The intersection of The Alameda and Race Street, however, was not included in the study intersections. This intersection has significant potential to be impacted by the Baseball Stadium. First, during simultaneous events, a substantial portion of motorists traveling to HP Pavilion from the north on I-280 may use Meridian Avenue, San Carlos Street, Race Street and The Alameda in order to avoid congestion on Bird Avenue and Autumn Street. Second, the intersection of The Alameda and Race Street has high traffic volumes and awkward geometry, with Martin Avenue also being part of the intersection. According to 2005 traffic volumes published by the City, the volume on The Alameda at Race Street is higher than at either Hedding Street or West Taylor Street, both of which were included as study intersections. By failing to address potential impacts of the Baseball Stadium at the intersection of The Alameda and Race Street, the DSEIR denies decision-makers, the public and Silicon Valley Sports a reasonable opportunity to review and comment on the true traffic impacts of the Baseball Stadium.

F. The DSEIR understates traffic impacts by failing to analyze impacts related to site demolition and Stadium construction.

The DSEIR understates the potentially significant transportation effects of the Baseball Stadium, because it omits any analysis of foreseeable traffic impacts that will occur during the demolition and construction phases of the Baseball Stadium. For example, based on the project description, it is likely that Montgomery Street would have to be closed south of San Fernando Street early during the construction process. Unless the proposed Autumn Street extension is completed north to at least Santa Clara Street by that time, significant traffic impacts most certainly would arise. The DSEIR should be revised to disclose traffic counts generated by demolition and construction crews and equipment/material deliveries and include a description of the likely location of equipment staging areas, construction site access points, anticipated road closures that may occur when the site is being cleared and developed, traffic diversions that will result, and construction phasing plans. The traffic analysis should also examine congestion likely to occur at local intersections during this critical phase of development and include measures to minimize such impacts, such as commitments to complete Autumn Street improvements prior to closure of Montgomery Street. Without such analysis, the decision-makers and the public cannot evaluate the full extent of Baseball Stadium impacts, and are thus denied a meaningful opportunity to review and comment.

III. The DSEIR Understates Parking Impacts Because It Overstates Parking Supply (Based on Unsupported Assumptions) and Omits Any Analysis of Cumulative Parking Impacts.

Due to its proximity to the Baseball Stadium, HP Pavilion relies on the same parking facilities that the DSEIR identifies for the Baseball Stadium. As a result, parking demand in excess of available supply in the parking facilities surrounding the Baseball Stadium will adversely affect HP Pavilion. The DSEIR must identify these significant impacts, as well as feasible means to avoid or mitigate them, and if mitigation is not feasible, must disclose that these impacts are significant and unavoidable.

A. The DSEIR's "non-viability" significance criterion for parking impacts has no technical or evidentiary basis and conceals significant parking impacts.

The DSEIR uses an artificially constrained significance criterion for parking to conceal the true parking impacts of the Baseball Stadium. Traffic engineers rely on standards published by professional organizations (such as the Institute of Traffic Engineers and Urban Land Institute) to assess the adequacy of parking supply for a project. Typically, these standards are based upon actual parking surveys for various land uses, and consider impacts to be significant when parking demand for a project exceeds the "effective parking supply." As further addressed in Part III.B, the effective parking supply generally is considered to be 85 to 90 percent of the total parking space inventory. Consistent with this typical engineering practice, the City's General Plan provides that "[a]dequate off-street parking should be required in conjunction with all future developments," and the City's parking ordinance indicates that its purpose is to "[p]romote adequate off-street

parking ... to meet the needs generated by a specific use.”<sup>9</sup> City General Plan, p. 99; City Municipal Code §20.90.010.

The 2006 EIR stated that the Baseball Stadium would have a significant impact if it would result in inadequate parking capacity. This standard, if properly applied, would be consistent with standard practice. Without explanation, however, the DSEIR curtails this significance criterion to situations in which the Baseball Stadium would result in inadequate parking capacity “for existing land uses,” thereby inexplicably omitting the entire issue of adequacy of parking for the Baseball Stadium itself, despite the express language of the parking ordinance regarding parking adequate “to meet the needs generated by a specific use.” Then the DSEIR *further* curtails this significance criterion in the analysis text. While “acknowledg[ing] that business owners might think that there is a real problem if there were a serious financial impact to their business ... due to increased competition for parking,” the DSEIR text redefines “inadequate parking” to mean “that the baseball stadium would consume such a disproportionate share of the available Downtown parking inventory that existing uses (including the HP Pavilion) that rely on parking *become non-viable*.” DSEIR, p. 62 (emphasis added). That is, although the DSEIR significance parking criterion is triggered if there is inadequate parking to serve surrounding uses, the DSEIR actually considers parking impacts significant only if a business *would fail* because of those impacts.

The City’s reliance on a “non-viability” criterion to measure the significance of parking impacts cannot be justified legally or technically, and lacks any evidentiary support. The DSEIR does not cite to *any* professional traffic engineering guidance suggesting that economic non-viability is an appropriate measure of an adequate parking supply. Indeed, we are not aware of any other instance in which the City has used this criterion, including in the 2006 EIR. Instead, it appears that the DSEIR may have curtailed this criterion in response to comments received on the 2006 EIR and the NOP in order to minimize the significance of the parking impacts of the Baseball Stadium, rather than showing a parking shortage and requiring the construction of new parking as mitigation (*see* Part III. B below). As a result, the DSEIR fails to disclose the true scope of the impact of the Baseball Stadium on Downtown parking or to identify feasible means to avoid or mitigate that impact. As such, decision-makers, the public and Silicon Valley Sports are denied a meaningful opportunity to review and comment.

B. The DSEIR conceals parking impacts by overstating parking supply, based on numerous unsupported technical assumptions.

The DSEIR relies upon unsupported assumptions to reach its conclusion that parking impacts will not be significant because sufficient parking spaces are available within Downtown to accommodate simultaneous events. These assumptions stretch typical traffic

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<sup>9</sup> Per the City’s Downtown Zoning Regulations, minimum parking requirements may be *reduced only* up to 15% where the reduced number of spaces “will be adequate to meet the parking demand generated by the project,” provided such reduction “will not adversely affect surrounding projects,” or, alternatively, *increased* when the “number of parking spaces allowed is inadequate to meet the parking requirements of the individual buildings and uses.” City Municipal Code §§20.70.330; 20.70.340.



engineering assumptions and lack evidentiary support. Following is an overview of the unsupported technical parking assumptions contained in the DSEIR.

1. *The 3/4 mile radius for parking supply is not supported by substantial evidence, resulting in overstated parking supply.*

The assumption in the DSEIR that Baseball Stadium patrons will walk more than 3/4 mile from off-site parking garages is not supported by substantial evidence. Rather, it appears to be a result-oriented assumption, designed to achieve an outcome of parking supply in excess of demand.

The 3/4 mile assumption conflicts with established professional standards. For example, the Federal Highway Administration's ("FHA") *Managing Travel for Planned Special Events Handbook* (September 2003) states (at page 5-27):

Identification of off-site parking areas depends on walking distance to the event venue. For example, a 15 minute walking time threshold allows consideration of off-street parking areas within 3,600 feet of an event venue, assuming a pedestrian walking speed of 4 feet per second. Parking areas located further from the venue would require continuous shuttle service.

In other words, the FHA establishes a maximum walking distance of 3,600 feet, which is 2/3 mile.

Furthermore, the 3/4 mile assumption conflicts with the experience of other baseball stadia around the country. For example, while the DSEIR asserts that patrons of AT&T Park walk more than a mile from BART, all of the parking facilities located on the AT&T Park website are located less than 3/4 mile from the stadium. Similarly, in addition to the 11,000 spaces within a few blocks designated for PETCO Park patrons in San Diego, the three off-site parking facilities identified on the PETCO Park website all are located within 2/3 mile of the stadium. For Progressive Field, home of the Cleveland Indians, the [www.baseballstadiums.us](http://www.baseballstadiums.us) website states that the available spaces within a 15 minute walk (which is about 2/3 mile) are sufficient to accommodate a sell-out baseball game. Moreover, the Environmental Impact Statement prepared for Target Field, the new home of the Minnesota Twins, used a 1/2 mile radius as the threshold for determining whether that project will provide adequate parking.

Finally, the 3/4 mile assumption conflicts with the 1/2 mile standard the City uses in the HP Pavilion TPMP. In fact, HP Pavilion would be subject to severe parking impacts during simultaneous events because most of the parking spaces within 1/2 mile of the Baseball Stadium are also the most critical spaces for HP Pavilion. As shown in Table III.1 below, all of the 3,326 parking spaces within 1/3 mile of the Baseball Stadium are either HP Pavilion on-site spaces, spaces that the City has reserved for HP Pavilion use (under Highway 87 at Santa Clara Street) or spaces within 1/3 mile of HP Pavilion that are required in order for the City to meet its commitments under the HP Pavilion Agreement. Of the 9,729 spaces available within 1/2 mile of the Baseball Stadium, 5,774 (59 percent) are either HP Pavilion on-site spaces, spaces that the City has reserved for HP Pavilion use,

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or spaces within 1/2 mile of HP Pavilion that are required in order for the City to meet its commitments under the HP Pavilion Agreement.

Table III.1  
Existing Parking Facilities as Presented in DSEIR

Parking Facility Number	Facility Name	Number of Spaces in DSEIR	Parking Spaces Allocated to HP Pavilion (on-site, committed to employees, or within 1/2 mile of HP)	Unallocated Spaces Available for Stadium
<b>Off-Street Parking Facilities Within 1/3 Mile Radius of Baseball Stadium</b>				
18	Arena Lot D	228	228 (on-site)	0
19	San José Water Lot (west)	280	228 (within 1/3 mile)	0
20	San José Water Lot (east)	575	575 (within 1/3 mile)	0
21	Santa Clara/87	232	Inventory in DSEIR is wrong; facility has a total of 270 spaces, of which 155 are allocated to HP Pavilion employees; remaining 115 are within 1/3 mile	0
42	Park Center Plaza III	1,320	1,320 (within 1/3 mile)	0
47	Cahill Lot 4	149	149 (within 1/3 mile)	0
49	Cahill Lot 1	180	180 (within 1/3 mile)	0
50	Cahill Lot 2	162	162 (within 1/3 mile)	0
51	Cahill Lot 3	90	90 (within 1/3 mile)	0
56	Palermo Lot	26	26 (within 1/3 mile)	0
57	Power Play Hockey Lot	14	14 (within 1/3 mile)	0
59	CCW Properties	70	70 (within 1/3 mile)	0
Subtotals within 1/3 mile of stadium		3,326	3,326 (100%)	0 (0%)
<b>Off-Street Parking Facilities Within 1/3 to 1/2 Mile Radius of Baseball Stadium</b>				
4	Ernst & Young Garage	400	0	400
10	Comerica - 333 W. Santa Clara	736	736 (within 1/3 mile)	0
14	Auzerais Lot	71	0	71
25	10 Almaden	700	0	700 (if owner commits to allowing parking by baseball customers)
32	Park Center Plaza I	267	0	267
33	Adobe	1,104	220 (within 1/3 mile)	884
34	Riverpark	1,413	0	1,413
44	Arena Lots A, B and C	1,447	1,447 (on-site)	0
45	Crowne Plaza Garage	184	0	184
48	Almaden/Woz Lot	36	0	36
55	Milligan Lot	45	45 (within 1/3 mile)	0
Subtotals within 1/3 to 1/2 mile of stadium		6,403	2,448 (38%)	3,955 (62%)
Cumulative totals within 1/2 mile of Baseball Stadium		9,729	5,774 (59%)	3,955 (41%)
Note: Parking facilities and spaces in each are the same as in the DSEIR, except that when the 1/2 mile ring splits a parking facility, the number of spaces within 1/2 mile is proportionate to the portion of the facility within 1/2 mile.				

The DSEIR attempts to address this problem by suggesting that spaces critical to HP Pavilion will be kept available to HP Pavilion patrons during simultaneous events by mechanisms

such supplying special parking passes with HP Pavilion tickets or having HP Pavilion patrons display tickets to parking garage operators. The DSEIR does not explain how the City will require private parking operators to implement these measures, turning away other paying patrons, including Baseball Stadium patrons, to instead accommodate only HP Pavilion patrons. Moreover, the DSEIR traffic analysis does not account for the added congestion that would inevitably be caused as Baseball Stadium patrons approach and then are turned away from these supposedly reserved HP Pavilion garages.

Notwithstanding evidence to the contrary, the DSEIR assumes that Baseball Stadium patrons will be willing to walk up to 30 minutes from off-street parking before shuttle service might be required, but fails to cite any substantial evidence to support this conclusion. Further, the DSEIR makes no assurance that shuttle service will be provided. The unsupported DSEIR assumptions regarding parking radius result in an overstatement of parking supply. The result is that the DSEIR fails to disclose the parking shortage that the Baseball Stadium will cause during simultaneous events.

2. *The DSEIR overstates parking supply by counting spaces that are not in fact available.*

The DSEIR is misleading regarding parking supply because it counts spaces that are not in fact available. Table IV.A-4 of the DSEIR identifies a greater number of available parking spaces in two parking structures than are included in the HP Pavilion TPMP, and identifies three parking facilities (10 Almaden, 160 W. Santa Clara, and 90 S. Market) that are not included in the HP Pavilion TPMP at all because the owners of these facilities have not made their spaces available to HP Pavilion patrons. Table III.2 shows the parking supply discrepancy between the DSEIR and the HP Pavilion TPMP at these five facilities.

Table III.2  
 Parking Discrepancy Between DSEIR and HP Pavilion TPMP

Parking Facility as Identified in DSEIR Table IV.A-4	Number of Parking Spaces Shown in Table IV.A-4	Number of Parking Spaces Shown in 2008 HP Pavilion TPMP	Parking Space Discrepancy between DSEIR and HP Pavilion TPMP
10. Comerica -333 W. Santa Clara	736	540	196
34. Riverpark	1,413	1,078	335
25. 10 Almaden	700	0	700
27. 160 W. Santa Clara	461	0	461
29. 90 S. Market	95	0	95
<i>Total Discrepancy between DSEIR and HP Pavilion TPMP</i>			1,787

Based on these figures, the DSEIR overstates parking supply by 1,787 spaces as a result of including spaces that cannot reasonably be assumed to be available for simultaneous events.

3. *The DSEIR overstates the parking supply by failing to acknowledge that actual parking capacity is only 85 to 90 percent of the available inventory.*

The DSEIR overstates the parking supply by overstating the actual parking occupancy that can be achieved in parking structures. The DSEIR assumes that the functional capacity of the parking facilities identified in the DSEIR is 100 percent of the total parking space inventory. Traffic engineering practice and published guidelines, however, dictate that actual parking supply not be used to evaluate parking impacts, because 100 percent occupancy "rarely occurs because of delays involved in motorists entering or leaving parking spaces or cruising in search of vacant spaces." See *Parking Garage Planning and Operation*, Eno Foundation for Transportation, Inc., 1978, p. 25. Instead, traffic engineering practice dictates use of the "effective parking supply," a parking occupancy figure that accounts for such operational inefficiencies. See *id.* As stated in the American Planning Association's 2006 *Planning and Urban Design Standards*, "[e]ffective parking supply is the number of occupied spaces at optimum operating efficiency. A parking facility will be perceived as full at somewhat less than its actual capacity, generally in the range of 85 to 95 percent." Per the Highway Research Board's *Parking Principles* (1971), "[b]y normal standards, when 85 to 90 percent of the spaces available to the general public are occupied, the system is considered to be used to capacity."<sup>10</sup> Based on the discrepancy between actual and effective parking supply, the DSEIR overstates parking supply by 5 to 15 percent.

4. *The conclusion of the DSEIR that parking supply exceeds Baseball Stadium parking demand is not supported by substantial evidence.*

The suggestion in the DSEIR that parking supply exceeds parking demand is unsupported and misleading. The DSEIR asserts that the parking demand of 13,929 spaces for a 36,000 seat stadium is less than the available supply of 13,997 spaces. The supply number is calculated as follows: 18,463 spaces within a  $\frac{3}{4}$  mile radius of the Baseball Stadium times 75 percent (to account for 25 percent occupancy by other users) plus 150 spaces on the Baseball Stadium site. Table III.3 below (prepared by Wenck) demonstrates that if any one of the unsupported assumptions used in the DSEIR are corrected, a parking deficiency will be shown.

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<sup>10</sup> See also, *Parking Garage Planning and Operation*, Eno Foundation for Transportation, Inc., 1978, p. 25 ("Effective supply usually is considered to be 85 percent of off-street spaces and 90 percent of curb spaces."); *Planning and Urban Design Standards*, American Planning Association, 2006 ("[I]t is appropriate to have a small cushion of spaces over the expected peak accumulation of vehicles. The cushion reduces the need to search the entire system for the last few parking spaces, and reduces patron frustration."); *Parking*, Eno Foundation for Transportation, Inc., 1990 ("Peak variations in usage and delays inherent in entering and leaving [parking] facilities ... reduce the efficiency of space usage. For these reasons, the maximum effective CBD parking supply is about 85 to 90 percent of the total.")

Table III.3  
 Parking Space Deficiency for a 36,000-Seat Stadium

PARKING ADEQUACY SCENARIO	PARKING DEMAND	AVAILABLE PARKING SPACES	PARKING SPACE DEFICIENCY
½ mile, spaces per HP Pavilion TPMP, 90% occupancy	13,929	5,886	8,043
½ mile, all spaces per SEIR, 90% occupancy	13,929	6,717	7,212
½ mile, all spaces per SEIR, 100% occupancy	13,929	7,447	6,482
2/3 mile, all spaces per SEIR, 90% occupancy	13,929	10,876	3,053
2/3 mile, all spaces per SEIR, 100% occupancy	13,929	12,068	1,861

In fact, in order to support the conclusion of adequate supply to meet demand, Wenck concludes that all of the following conditions would have to occur: (i) acceptable walking distance would have to be extended from the accepted ½ mile standard to 2/3 mile; (ii) the City would need to secure the availability of the three parking structures that have not been available in the past; and (iii) parking demand would have to be reduced by 22 percent (requiring a doubling of transit usage and an over 20 percent increase in average car occupancy). The DSEIR presents no substantial evidence to support the assumption that *any* of these conditions would in fact occur. As a result, the conclusion that parking supply would be adequate to meet demand is not supported by substantial evidence. The DSEIR must be revised to disclose the parking shortfall caused by the Baseball Stadium.

C. The DSEIR fails to include any analysis of parking impacts during weekday games.

The DSEIR does not include *any* analysis of parking impacts during weekday games. The DSEIR explains that traffic volumes would be higher before evening games than before weekday games, and therefore does not analyze traffic before weekday games. DSEIR, p. 32. This explanation, however, does not excuse the failure to analyze the adequacy of parking for weekday games. Unlike traffic volumes, parking occupancy will be higher during the day, when Downtown workers occupy many of the available Downtown spaces. As a result, the DSEIR assumption that 75 percent of parking spaces will be available for Baseball Stadium patrons is not true for weekday games. The DSEIR must be revised to include an analysis of the adequacy of parking for weekday baseball games.

D. The DSEIR fails to include *any* cumulative parking analysis.

The cumulative impact analysis in the DSEIR is fundamentally and basically inadequate, because it fails to include *any* analysis of the contribution of the Baseball Stadium to potentially significant cumulative parking impacts. Notably, our NOP comment letter expressly

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requested that cumulative parking impacts be analyzed, and the DSEIR itself identifies these impacts as potential areas of public controversy. DSEIR, p. 6. Table III.4 below (prepared by Wenck) demonstrates that a parking deficiency of approximately 3,600 to 11,700 spaces with addition of parking demand solely from the BART and HSR Projects (using the drastically reduced parking demand figures recently released for the HSR Project (*see* Part V.A below)), without even taking into account other probable cumulative parking demand resulting from implementation of the Downtown San Jose/Strategy 2000 Plan and the Diridon Plan.

Table III.4  
Parking Space Deficiency When Accounting For Baseball, BART Project  
and HSR Project

Parking Adequacy Scenario	Parking Demand for Baseball Stadium	Parking Demand for BART Project	Parking Demand for HSR Project	Total Parking Demand for Baseball Stadium, BART Project and HSR Project	Available Parking Spaces	Parking Space Deficiency
½ mile, spaces per HP Pavilion TPMP, 90% occupancy	13,929 (i)	1,499 (ii)	2,204 (iii)	17,632	5,886 (iv)	11,746
½ mile, all spaces per SEIR, 90% occupancy	13,929	1,499	2,204	17,632	6,717 (v)	10,915
½ mile, all spaces per SEIR, 100% occupancy	13,929	1,499	2,204	17,632	7,447 (vi)	10,185
2/3 mile, all spaces per SEIR, 90% occupancy	13,929	1,499	2,204	17,632	10,876 (vii)	6,756
2/3 mile, all spaces per SEIR, 100% occupancy	13,929	1,499	2,204	17,632	12,068 (viii)	5,564
¾ mile, all spaces per SEIR, 100% occupancy	13,929	1,499	2,204	17,632	13,997 (ix)	3,635

Notes:

- (i) Presented in Table IV.A-12 in Draft SEIR
- (ii) Parking demand for 2030 from Draft EIS for BART project, March 2009 (2,585) multiplied by 0.58, which is portion of spaces occupied at 6:30 p.m. based on survey of Cahill Lots
- (iii) Parking demand for 2035 from Station Area Parking Guidance Technical Memorandum, March 10, 2010 (3,800) multiplied by 0.58, which is portion of spaces occupied at 6:30 p.m. based on survey of Cahill Lots
- (iv) [(8,498 spaces within ½ mile of stadium with adjustments in HP Pavilion TPMP x 0.75 portion of total spaces not occupied) x 0.90 maximum occupancy factor] + 150 spaces on stadium site
- (v) [(9,729 spaces within ½ mile of stadium per DSEIR x 0.75 portion of total spaces not occupied) x 0.90 maximum occupancy factor] + 150 spaces on stadium site
- (vi) (9,729 spaces within ½ mile of stadium per DSEIR x 0.75 portion of total spaces not occupied) + 150 spaces on stadium site
- (vii) [(15,891 spaces within 2/3 mile of stadium per DSEIR x 0.75 portion of total spaces not occupied) x 0.90 maximum occupancy factor] + 150 spaces on stadium site
- (viii) (15,891 spaces within 2/3 mile of stadium per DSEIR x 0.75 portion of total spaces not occupied) + 150 spaces on stadium site
- (ix) (18,463 spaces within ¾ mile of stadium per DSEIR x 0.75 portion of total spaces not occupied) + 150 spaces on stadium site

The public cannot meaningfully evaluate and comment on the DSEIR's cumulative impact analysis when it completely omits any discussion of controversial cumulative impacts related to parking. The DSEIR must be revised to include cumulative parking analysis.

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In summary, the DSEIR understates the parking impacts of the Baseball Stadium by applying a technically unsupported significance criterion for parking impacts, by making unsupported assumptions and judgments regarding issues such as the parking radius and the number of parking spaces actually available, and by omitting analysis of daytime parking impacts or cumulative parking impacts. These errors and omissions evidence the result-oriented approach of the DSEIR, which appears designed to avoid the identification of significant parking impacts and the resultant obligation to mitigate by, for example, constructing additional parking. In doing so, the DSEIR denies decision-makers, the public and Silicon Valley Sports a meaningful opportunity to review and comment on the true parking impacts of the Baseball Stadium.

IV. The DSEIR Fails to Identify or Mitigate Significant Safety Impacts Resulting from Traffic Congestion.

The DSEIR indicates that a significant impact will result if the project "[s]ubstantially increase[s] hazards to a design feature or incompatible use" or will "result in inadequate emergency access." DSEIR, pp. 45-46. Notwithstanding the inclusion of this criterion, the DSEIR fails to address significant impacts on pedestrian safety and emergency access resulting from traffic congestion caused by the Baseball Stadium.

A. The DSEIR fails to identify or mitigate significant pedestrian safety impacts resulting from traffic congestion.

The DSEIR fails to identify significant pedestrian safety impacts resulting from the traffic congestion caused by the Baseball Stadium. The DSEIR provides pedestrian analysis only for one of the two off-site parking scenarios, and does not provide any update to the pedestrian analysis presented in the 2006 EIR for the Baseball Stadium itself. The DSEIR endeavors to explain this omission on the grounds that the reduced stadium size would reduce demand for pedestrian facilities, but the same pedestrian improvements would still be necessary. This explanation lacks merit.

First, in addition to the project change of reduced seating, new information and changed circumstances exist that also would affect pedestrian safety, and therefore must be addressed in the DSEIR. CEQA Guidelines § 15162. For example, the DSEIR should assess the effect on the 2006 EIR pedestrian analysis of the updated traffic counts, changes in the Approved Trip Inventory and changes in probable future projects included in the cumulative scenario in the DSEIR.

Second, the DSEIR does not in fact identify any *required* pedestrian improvements. The TIA identifies "improvement measures" that may be considered in the Stadium TPMP, but are not required to be included in the Stadium TPMP nor identified as mitigation. Moreover, no updated analysis has been completed to determine whether these improvement measures (which in some cases eliminate a pedestrian scramble phase and instead simply propose widening crosswalks) would provide sufficient capacity for safe pedestrian movements. The DSEIR should be revised to include pedestrian analysis consistent with the guidance provided in Chapter 18 of the Highway Capacity Manual 2000, as specified under Section 6.2.5 in the VTA CMP Transportation Impact Analysis Guidelines dated March 2009 ("VTA TIA Guidelines"). In addition, the impacts of these

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improvement measures (for example, the impact of prohibiting left turns on all approaches of the Autumn Street/Park Avenue intersection) have not been analyzed.

Third, the conclusion of the DSEIR that the signalized intersections of Santa Clara Street with Cahill Street and Montgomery Street, and Autumn Street can accommodate the projected 6,320 pedestrians crossing Santa Clara Street is not supported by substantial evidence.

Fourth, the DSEIR does not include *any* analysis of cumulative pedestrian safety impacts.

To ensure that the public is fully informed about the potential pedestrian safety and impacts associated with the Baseball Stadium, the DSEIR must be revised to examine the full potential of the Baseball Stadium to impact pedestrian safety and identify feasible measures to avoid or mitigate such impacts.

B. The DSEIR fails to identify or mitigate significant impacts to emergency access resulting from traffic congestion.

Although the DSEIR discloses that several Downtown intersections will operate at *worse* than LOS D under project and cumulative conditions, and despite its recognition that the anticipated close-in parking shortage will result in drivers circling around Downtown looking for available parking spaces, the DSEIR fails to examine the impact of this traffic congestion on emergency vehicle response times under either project or cumulative conditions. As a result, there is no way to evaluate the degree to which the Baseball Stadium may hinder the ability of emergency vehicles to navigate the Downtown area before and after baseball games as they attempt to respond to emergencies that may occur in adjacent neighborhoods. The DSEIR must be revised to include an analysis of the impact of the Baseball Stadium on emergency vehicle response times and feasible measures to avoid or mitigate such impacts.

In summary, the DSEIR fails to disclose the safety impacts of the Baseball Stadium by failing to update the pedestrian safety analysis of the Baseball Stadium contained in the 2006 EIR, making unsupported assumptions regarding the effectiveness of the Stadium TPMP, making unsupported assumptions regarding the adequacy of provisions for pedestrians crossing Santa Clara Street, and omitting analysis of emergency access impacts or cumulative safety impacts. In doing so, the DSEIR denies decision-makers, the public and Silicon Valley Sports a meaningful opportunity to review and comment on the true safety impacts of the Baseball Stadium.



V. The DSEIR Cumulative Transportation Analysis Is Inadequate Because It Fails to Include Probable Future Projects in the Cumulative Scenario, Omits Any Analysis of Cumulative Parking, Safety and Transit Impacts, and Does Not Disclose Cumulative LOS Impacts.

A. The DSEIR cumulative transportation analysis fails to address probable future projects, including the HSR Project, the BART Project and the Diridon Plan.

The DSEIR must discuss cumulative impacts if they are significant and the incremental contribution of the Baseball Stadium is "cumulatively considerable." 14 Cal. Code Regs. § 15130(a). The incremental contribution of the Baseball Stadium is cumulatively considerable if the incremental effects of the Baseball Stadium are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." 14 Cal. Code Regs. § 15065(a)(3). The analysis of cumulative impacts in the DSEIR must consider *all* possible sources of related impacts. 14 Cal. Code Regs. § 15130(a)(1); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4<sup>th</sup> 889, 907. As currently drafted, however, the cumulative impact analysis of the DSEIR does *not* account for all related impacts associated with the HSR Project, the BART Project, and the Diridon Plan. Moreover, the cumulative analysis omits any discussion of cumulative parking, transit service and safety impacts. Without such information, the cumulative impact analysis of the DSEIR cannot adequately inform the public about the full extent of the contribution of the Baseball Stadium to potentially significant cumulative transportation impacts.

1. *The cumulative transportation analysis omits the HSR Project, despite acknowledging that it is a foreseeable project.*

In July 2008, the California High-Speed Rail Authority certified the *Final Bay Area to Central Valley High-speed Train Program EIR* ("HSR Final PEIR"). On August 8, 2008, litigation was filed challenging the adequacy of the HSR Final PEIR, and the court ultimately concluded that the HSR Final PEIR failed to comply with CEQA on grounds unrelated to transportation impacts. The High Speed Rail Authority recently has published a Revised HSR PEIR that addresses the issues raised in the court's decision but otherwise does not disturb the HSR Final PEIR, including its transportation impact analysis. *Id.* The Revised HSR PEIR is open for public comment until April 26, 2010.

The DSEIR improperly asserts that it need not consider the HSR Project in the cumulative transportation analysis because "detailed information regarding HSR station and parking facilities locations necessary to complete a quantitative analysis of the HSR Project under cumulative conditions is not available at this time." See DSEIR at pp. 111-112. The principle that EIRs can and should make reasonable forecasts is well established in the case law. CEQA Guidelines section 15144 establishes that "[d]rafting an EIR or negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, *an agency must use its best efforts to find out and disclose all that it reasonably can*" (emphasis added). See *San Francisco Ecology Center v. City & County of San Francisco* (1975) 48 Cal.App.3d 584, 595. CEQA does not permit a lead agency to ignore the potential impacts of a probable future project when conducting its cumulative

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analysis. Here, the City must use *best efforts* to locate and disclose all pertinent information about the HSR Project's potential transportation impacts in the cumulative transportation impacts analysis of the DSEIR.

The DSEIR omits *any* analysis of cumulative transportation impacts associated with the planned HSR Project. The HSR Project is identified on DSEIR Table V-1 as a probable future project with related cumulative impacts. Moreover, the DSEIR acknowledges that a programmatic EIR for the HSR system has been prepared and that a project-level EIR for the northern California HSR segment is currently being drafted. Nevertheless, the discussion of cumulative transportation impacts in the DSEIR expressly omits the related impacts of the HSR Project on the basis that the HSR environmental review process is ongoing and detailed information about cumulative conditions is purportedly unavailable. This assertion, however, is a legally insufficient basis to forego such critical analysis.

The CEQA Guidelines provide that "[t]he discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence" and "should be guided by the standards of practicality and reasonableness." CEQA Guidelines § 15130(b). Reviewing courts have determined that it is reasonable and practical to include as "probable future projects" any related projects where the applicant has devoted substantial time and resources to prepare for regulatory review, generally indicated by the commencement of environmental review. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74 -75 ("*San Franciscans*") (invalidating cumulative analysis for failing to include related projects for which an EIR had been required on the basis that a significant investment of time, money and technical planning have necessarily occurred before a project is even submitted for initial CEQA review); *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859, 869 ("*Eel River*") (invalidating cumulative analysis for failing to consider a probable future project because the Federal Energy Regulatory Commission had initiated its environmental review pursuant to the National Environmental Policy Act); *Gray v. County of Madera* (2008) 167 Cal.App.4<sup>th</sup> 1099, 1127-1128 ("*County of Madera*") ("any future project where the applicant has devoted significant time and financial resources to prepare for any regulatory review should be considered as probable future projects for review.").

Here, the DSEIR acknowledges that the entire HSR system has undergone an initial round of programmatic CEQA review and that project-level CEQA analysis of the HSR Project facilities proposed for the Diridon planning area is ongoing. Since the HSR Project is currently subject to CEQA review, per *San Franciscans*, *Eel River* and *County of Madera*, the HSR Project clearly qualifies as a probable future project the impacts of which must be considered in the cumulative transportation impact analysis of the DSEIR. The DSEIR cannot ignore the HSR Project simply because it is currently undergoing CEQA review. The omission of *any* analysis of the HSR Project in the cumulative transportation impacts analysis in the DSEIR renders the DSEIR so fundamentally and basically inadequate that meaningful public review and comment is precluded. The DSEIR must be revised to include this analysis and recirculated for public review.

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The HSR Final PEIR indicates that the proposed San Jose Diridon HSR station would have over five million annual passenger boardings for the preferred Pacheco Pass alternatives (three million for the Altamont Pass alternatives) and would increase parking demand at the Diridon Station between 7,200 and 9,800 spaces for the preferred Pacheco Pass alternatives (6,500 to 8,800 spaces for the Altamont Pass alternatives). (HSR Final PEIR at pp 3.1-31 to 32; Final HSR PEIR Ridership and Revenue Forecasts Final Report at p. 2-10.)<sup>11</sup> Appendix 2-F to the HSR Final PEIR indicates that there are only 595 spaces available for all-day parking in surface lots adjacent to the station and that the High Speed Rail Authority proposes to add 1,432 spaces in a five-level structure. (HSR Final PEIR page 2-F-32). These data suggest that up to 8,400 parking spaces will be impacted in the surrounding neighborhood, a number that would outstrip the available off-site parking spaces identified in the DSEIR when added to the projected Baseball Stadium demand for either the 32,000 or 36,000 seat scenarios. None of these data, however, are discussed in the DSEIR.

The DSEIR cumulative transportation analysis also omits HSR-related auto trips from the cumulative traffic analysis. Using the data set forth in Tables A-1, A-2 and A-3 of the HSR Technical Memorandum, it is possible to calculate the number of daily trips likely to be generated by the HSR Station. These trips are summarized in Table V.1 below.

Table V.1  
 HSR Station Trip Generation

TYPE OF VEHICLE TRIP	DAILY TRIPS ARRIVING AT STATION	DAILY TRIPS DEPARTING STATION	DAILY TRIP ENDS
Auto drop-off	1,200	1,200	2,400
Auto pick-up	1,200	1,200	2,400
Autos arriving and departing for parking	1,400	1,400	2,800
Rental cars brought back and departing	600	600	1,200
Taxis drop-off	600	600	1,200
Taxis pick-up	600	600	1,200
Totals	5,600	5,600	11,200

Note: This table is based on data presented in Table A-1 in Station Area Parking Guidance Memorandum, which was published by the

<sup>11</sup> The recently released California High-Speed Rail Train Project Technical Memorandum Station Area Parking Guidance, dated March 10, 2010 (the "HSR Technical Memorandum"), states that the total daily parking demand for the Diridon HSR station is expected to be 3,400 spaces in 2025, 3,600 spaces in 2030, and 3,800 spaces in 2035. These numbers represent a dramatic reduction in the figures described in the HSR Final PEIR. The HSR Technical Memorandum does not explain the basis for the reduction, other than to suggest that if there is inadequate parking, riders will get dropped off instead of driving themselves. As noted in Part III.D above, however, even using these lower numbers, a parking shortfall still would occur.

California High Speed Rail Authority on March 10, 2010. All vehicle trips are accounted for, except for regional transit buses that would stop at the station.

The DSEIR must be revised to include these trips in the cumulative traffic analysis.

2. *The cumulative parking analysis must include BART Project parking demand because, as the DSEIR acknowledges, it is a foreseeable project.*

As noted in Part III.D above, the DSEIR must be revised to include cumulative parking analysis. The DSEIR acknowledges that the BART Project is a "reasonably foreseeable" project that must be included in the cumulative analysis and that "detailed information regarding BART's effects on traffic is now available." See DSEIR, pp. 102, 111. The Silicon Valley Rapid Transit Corridor DEIR dated March 2009 states that expected BART Project parking demand for the Diridon Station is 1,610 parking spaces upon opening and for 2,585 parking spaces by 2030. This BART Project parking demand must be factored into the cumulative parking impact analysis.

3. *The cumulative parking analysis must include Diridon Plan in the cumulative transportation analysis because, as the DEIR acknowledges, it is a foreseeable project.*

The DSEIR acknowledges that the Diridon Plan is a "reasonably foreseeable" project that must be included in the cumulative analysis. DSEIR, p. 102 and Table V-1. Later, however, the DSEIR asserts that "[g]iven where the Diridon Station Area Plan planning effort is in its process, it can only be discussed at a *qualitative* level in this cumulative analysis." DSEIR, p. 106 (emphasis in original). The cumulative transportation discussion of the DSEIR does not provide even such qualitative analysis. The TIA indicates that the cumulative analysis was based on building out the *Strategy 2000* plan, with no mention of the Diridon Plan. TIA, p. 41.

The City is contractually obligated to prepare an environmental impact report to evaluate the environmental effects of the proposed Diridon Plan as a condition of the funding agreement between the City and the Metropolitan Transportation Commission that was approved in May 2009. In addition, the City currently is undertaking extensive community outreach and planning activities related to its ongoing preparation of the Diridon Plan. These actions represent a sufficient commitment of resources to make the Diridon Plan a probable future project that must be included in the DSEIR cumulative transportation analysis.

As noted in Part III.D above, the DSEIR must be revised to include cumulative parking analysis. The Final Draft of the Diridon/Arena Strategic Development Plan, dated April 2003, indicates that the Diridon Plan will require 15,000 parking spaces. This Diridon Plan parking demand must be included in the DSEIR cumulative parking analysis.

- B. The DSEIR fails to identify and mitigate significant cumulative traffic LOS impacts.

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The DSEIR fails to disclose the cumulatively considerable contribution of the Baseball Stadium to significant cumulative traffic LOS impacts, despite the acknowledgement in the TIA that, depending on the parking variant, in the 6:00 to 7:00 PM hour, "the addition of project traffic at each of the [four or five] intersections would contribute to a cumulatively significant impact". TIA, p. 42. As in the project analysis, the cumulative analysis in the DSEIR fails to apply the City LOS Threshold or the CMP LOS Threshold, and as a result does not identify *any* cumulative traffic LOS impacts, or measures to avoid or mitigate such impacts.

The DSEIR must assess whether the Baseball Stadium contributes considerably to a significant cumulative traffic impact. With respect to significant traffic impacts, Wenck applied the first prong<sup>12</sup> of the City LOS Threshold and the CMP LOS Threshold to 6:00 to 7:00 PM, simultaneous event, cumulative scenario and identified numerous significant cumulative impacts. Significant cumulative impacts would occur at five intersections under the City LOS Threshold, as indicated in Table V.2 below (prepared by Wenck) and at two intersections under the CMP LOS Threshold, as indicated in Table V.3 below (prepared by Wenck).

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<sup>12</sup> The DSEIR, does not provide clear data regarding the increase in critical movement delay and v/c ratio between background and cumulative conditions, relevant to the application of the second prong of each the City LOS Threshold and the CMP LOS Threshold. These second prongs appear inapplicable, however, because the TIA does not identify any intersections that operate at LOS E or F under background conditions.

**Table V.2**  
**Significant Cumulative LOS Impacts under 1<sup>st</sup> Prong of City LOS Threshold**

Intersection	Background LOS	Scenario	Cumulative LOS
NB SR 87 Ramps and W. Julian St.	D	32,000 seats; all parking scenarios	E
		36,000 seats; 1,200 space parking structure and 1,300 spaces on HP Pavilion site	E
		36,000 seats; no parking structure	F
S. Autumn St. and Santa Clara St.	D	32,000 and 36,000 seats; 1,200 space parking structure and 1,300 parking spaces on HP Pavilion site	E
Bird Ave. and San Carlos St.	D	32,000 seats; 1,200 space parking structure and no parking structure	E
		36,000 seats; all parking scenarios	E
Delmas Ave. and Park Ave.	C	32,000 seats; all parking scenarios	E
		36,000 seats; all parking scenarios	F
Montgomery St. and Santa Clara St.	C	32,000 seats; 1,200 space parking structure and no parking structure	E
		32,000 seats; 1,300 parking spaces on HP Pavilion site	F
		36,000 seats; 1,200 space parking structure	E
		36,000 seats; 1,300 parking spaces on HP Pavilion site and no parking structure	F

**Table V.3**  
**Significant Cumulative LOS Impacts under 1<sup>st</sup> Prong of CMP LOS Threshold**

Intersection	Background LOS	Scenario	Cumulative LOS
NB SR 87 Ramps and W. Julian St.	D	6:00-7:00 PM, 36,000 seats; no parking structure	F
Montgomery St. and Santa Clara St.	C	6:00-7:00 PM, 32,000 seats, 1,300 parking spaces on HP Pavilion site	F
		6:00-7:00 PM, 36,000 seats, 1,300 parking spaces on HP Pavilion site and no parking structure	F

Note: The intersections and scenarios in this Table V.3 are included in Table V.2, because they also exceed the City LOS Threshold.

The DSEIR acknowledges that these intersections would operate at an LOS worse than D (a reference to the City LOS Threshold) and experience "significant cumulative impacts." DSEIR, pg.

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112. The DSEIR does not apply the CMP LOS Threshold to these intersections at all. In addition, the DSEIR does *not* acknowledge that, with the Park Avenue narrowing, the intersection of Park Avenue and Autumn Street would decline from LOS D to LOS F in the 36,000 seat, 5:00 to 6:00 PM cumulative scenario, with delay increasing by 285 percent.

Moreover, the DSEIR does not assess whether the Baseball Stadium would contribute considerably to these significant cumulative impacts, instead again dismissing these impacts as acceptable under the City Transportation Policy. *Id.* The TIA, although acknowledging that "the addition of project traffic would contribute to a cumulatively significant impact",<sup>13</sup> again cites the LOS exemption in the City Transportation Policy. TIA, pp. 42, 47. The summary of cumulative impacts in the DSEIR does not identify significant cumulative intersection impacts. DSEIR, p. 116. As a result, the DSEIR does not identify feasible means to avoid or mitigate these cumulative impacts. (Instead, the DSEIR merely summarizes the mitigation measures identified in the Strategy 2000 study to address these "intersection LOS shortcomings" but does not suggest that these measures be implemented.)

In summary, the DSEIR understates the significant cumulative transportation impacts to which the Baseball Stadium contributes considerably by omitting any cumulative parking, traffic safety and transit analysis; by excluding probable future projects such as the HSR Project, the BART Project (parking) and the Diridon Plan; and by not disclosing significant cumulative traffic LOS impacts. In doing so, the DSEIR denies decision-makers, the public and Silicon Valley Sports a reasonable opportunity to review and comment on cumulative transportation impacts and feasible means to avoid or mitigate those impacts.

Based on the foregoing inadequacies, the DSEIR must be revised and recirculated to provide decision-makers, the public and Silicon Valley Sports a meaningful opportunity to comment. Pursuant to CEQA Guidelines Section 15088.5, the City is required to recirculate the DSEIR when significant new information is added to the DSEIR after public notice is given of the availability of the DSEIR for public review but before certification. Per CEQA Guidelines Section 15088.5(a)(1-4), "significant new information" requiring recirculation includes, but is not limited to, the following:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; or
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; or

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<sup>13</sup> The DSEIR does not provide clear data regarding the contribution of the Baseball Stadium to cumulative LOS conditions.

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- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it; or
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

As described above, the DSEIR fails to identify new and substantially more severe transportation impacts or feasible means to avoid or mitigate those impacts, and, due to an unstable project description and numerous errors and other issues, is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment have been precluded in this case. Specifically, the DSEIR must be revised to disclose the significant transportation impacts of the Baseball Stadium, identify feasible measures to avoid or mitigate those impacts, and correct errors and omissions identified herein, and be recirculated for public comment, so that decision-makers, the public and Silicon Valley Sports are afforded a meaningful opportunity to comment.

On behalf of Silicon Valley Sports, we appreciate the opportunity to comment on the DSEIR and look forward to reviewing a revised and recirculated DSEIR that adequately addresses the issues identified herein. In the meantime, please note that Silicon Valley Sports reserves its right to submit additional comments as additional relevant information becomes available.

Respectfully submitted,

COX, CASTLE & NICHOLSON, LLP

By   
R. Clark Morrison

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cc: Mr. Jim Goddard, Executive Vice President and General Manager, Silicon Valley Sports and Entertainment  
Don Gralnek, Esq., Executive Vice President and General Counsel, Silicon Valley Sports and Entertainment  
Mr. Greg Jamison, President and Chief Executive Officer, Silicon Valley Sports and Entertainment



**EXHIBIT C**

**Silicon Valley Sports and Entertainment, LLC  
Comment Letter dated May 18, 2010**

(attached)

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May 18, 2010

File No. 60516

VIA E-MAIL AND FACSIMILE

Members of the City of San Jose Planning Commission  
c/o Mr. Darryl Boyd  
City of San Jose  
Department of Planning, Building, and Code Enforcement  
200 East Santa Clara Street  
San Jose, California 95113

Re: Comments on First Amendment to Supplemental Environmental Impact Report  
(Response to Comments) for the Baseball Stadium in the Diridon/Arena Area

Dear Members of the City of San Jose Planning Commission:

On behalf of Silicon Valley Sports and Entertainment, a California limited liability company (together with its affiliate, San Jose Arena Management, LLC, collectively referred to herein as "Silicon Valley Sports"), the manager of the HP Pavilion, we submit the following comments with respect to the First Amendment to Supplemental Environmental Impact Report (Response to Comments) (the "Response to Comments") for the Baseball Stadium ("Baseball Stadium") in the Diridon/Arena Area.

Silicon Valley Sports is firmly committed to providing a first class experience to HP Pavilion patrons, as well as to implementing measures to protect our neighbors from intrusion into their neighborhoods. The patrons and neighbors of HP Pavilion expect and deserve that the City of San Jose (the "City") and the San Jose Redevelopment Agency (the "Agency") will not approve projects that will undermine their experiences, and instead will fully analyze, identify, and mitigate the impacts of new development Downtown. (The City and the Agency sometimes are referred to collectively herein as "San Jose" for convenience.)

As detailed in our March 29, 2010, comment letter on the Draft Supplemental Environmental Impact Report (the "DSEIR") for the Baseball Stadium (the "Comment Letter")<sup>1</sup>, the DSEIR failed to comply with CEQA's mandate to provide good faith, reasoned analysis of environmental impacts, instead engaging in a result-oriented approach designed to avoid the identification of significant impacts and the resultant need to mitigate those impacts. The Response to Comments fails to remedy this problem.

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<sup>1</sup> The Response to Comments designates the Comment Letter as "Letter C7." The Comment Letter is incorporated herein by this reference.

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## COMMENTS ON RESPONSE TO COMMENTS

CEQA mandates that San Jose provide good faith, reasoned analysis in response to all significant environmental issues raised in comments on the DSEIR.<sup>2</sup> If San Jose's position is at variance with recommendations and objections raised in comments, San Jose must address the comments in detail and give specific reasons why comments and suggestions were not accepted. Conclusory statements unsupported by factual information will *not* suffice. 14 Cal. Code Regs. § 15088(c).

San Jose's responses to the significant environmental issues raised in the Comment Letter and other comments on the DSEIR are inadequate. As illustrated in the examples below, San Jose's responses fail to provide good faith, reasoned analysis of the comments or to give specific reasons why comments were not accepted. The responses largely are conclusory statements unsupported by factual information. *See Rural Land Owners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013, 1020.

As described in the Comment Letter and herein, the Baseball Stadium will cause significant traffic impacts (including severe congestion at intersections in the vicinity of the Baseball Stadium), significant parking impacts (including demand in excess of supply during simultaneous events and an even greater shortfall under cumulative conditions), significant impacts to pedestrian safety and emergency vehicle access (including unsafe pedestrian/traffic interaction and potentially inadequate emergency response times), and significant cumulative transportation impacts.

### I. The Response to Comments Fails to Adequately Respond to Comments Regarding the Understatement of Traffic Impacts.

Due to its proximity to the Baseball Stadium, HP Pavilion relies on the same basic street network for ingress and egress. As a result, unmitigated traffic congestion on the street network surrounding the Baseball Stadium will adversely affect ingress and egress to and from HP Pavilion.

As described in the Comment Letter, the DSEIR understates traffic impacts because it analyzes only the 5:00 to 6:00 PM single event scenario even though traffic volumes will be higher during the 6:00 to 7:00 PM and simultaneous event scenarios; uses illusory significance criteria; understates the impacts of simultaneous events by omitting foreseeable project trips; relies on unsupported assumptions regarding measures to avoid or mitigate traffic impacts; fails to analyze impacts at The Alameda and Race Street; and omits any analysis of construction traffic impacts. The

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<sup>2</sup> Providing detailed written responses to comments helps to ensure that the lead agency will fully consider the environmental consequences of its decision to approve a project before the decision is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful. *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 904.

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Response to Comments fails to adequately respond to these comments, as illustrated by the examples below.

A. The Response to Comments Fails to Adequately Respond to Comments Regarding the Understatement of Traffic Impacts as a Result of Limiting Analysis to the 5:00 to 6:00 P.M., Single Event Scenario.

1. 5:00 to 6:00 p.m. Limitation

As detailed in the Comment Letter, the DSEIR understates traffic impacts by limiting its analysis to the 5:00 to 6:00 p.m., single event scenario, when in fact greater impacts would occur during the 6:00 to 7:00 p.m., single and simultaneous event scenarios. Response to Comment C7-30 asserts that the DSEIR was prepared in accordance with the City LOS Policy and the Santa Clara County CMP, and that 5:00 to 6:00 p.m. is the "typical" peak hour that is analyzed in San Jose. Master Response 1 further asserts that the City "consistently" uses 4:00 to 6:00 p.m. to analyze traffic impacts because that is when "typical" worst-case traffic conditions occur.

Notably, in Comment B5-19, the Santa Clara Valley Transportation Authority ("VTA"), which administers the Santa Clara County CMP relied upon by the City, questions the City's reliance on these policies. Instead, noting that most baseball games start at 7:30 p.m., "VTA recommends including data and further explanation demonstrating whether the freeway system's regular peak hour matches the baseball game traffic peak hour." Response to Comment B5-19 asserts that overall freeway volumes with the Baseball Stadium would be higher from 5:00-6:00 p.m. than from 6:00 to 7:00 p.m. With respect to intersections, however, Master Response 1 concedes (and data in the DSEIR demonstrates) that some intersections may be more congested outside of this peak hour. Nonetheless, the Master Response falls back on the City LOS Policy and the Santa Clara County CMP to suggest that impacts occurring outside of the 5:00 p.m. to 6:00 p.m. hour *cannot* be significant.

CEQA prohibits this type of blind reliance on a particular threshold to preclude the identification of an impact. "The fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant." *Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4<sup>th</sup> 1099, 1109. A threshold of significance "cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant." *Id.* Pursuant to the CEQA Guidelines, thresholds of significance can be used only as a measure of whether a certain environmental effect "will *normally* be determined to be significant" or "*normally* will be determined to be less than significant" by the lead agency. 14 Cal. Code Regs. § 15064.7(a) (emphasis added).

Because of the sheer volume of traffic that it generates, the Baseball Stadium represents a significant deviation from "normal" or "typical" conditions. Yet the Response to Comments fails to provide detailed, reasoned analysis as to why traffic impacts cannot occur during the 6:00 to 7:00 p.m. time period, instead relying on conclusory citations to "consistent" City policy, in violation of CEQA.

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## 2 Single Event Limitation

As noted in the Comment Letter, the DSEIR understates the frequency and severity of traffic impacts during simultaneous events because it does not assess impacts from simultaneous secondary events or simultaneous events at other Downtown venues. Master Response 2 asserts that there is no need to consider secondary events, because they will generate no more traffic than a baseball game. The DSEIR nonetheless understates the frequency of simultaneous events by focusing on the limited overlap between the hockey and baseball season, and in doing so denies a meaningful opportunity to comment on the severity of the impact. Master Response 2 indicates that "the A's played 11 weekday evening games on days when there were also events scheduled at HP Pavilion." Response to Comments, p. 10. As shown on the table prepared by Wenck Associates, Inc. attached hereto as Exhibit A, in 2008 there were 27 days when events were occurring at HP Pavilion and Oakland Coliseum, with traffic overlap occurring on 25 of those days. Likewise, in 2009, there were 18 days when events were occurring at HP Pavilion and Oakland Coliseum, with traffic overlap occurring on 17 of those days. Thus, Master Response 2 understates the frequency of traffic and/or parking overlaps occurring when events are likely to be held at HP Pavilion and the Baseball Stadium.

Master Response 2 further asserts that simultaneous large events at other downtown venues are infrequent, and that "[a]nalysis of such atypical, temporary traffic conditions and resultant conclusions would misleadingly suggest that costly, permanent transportation system improvements should be constructed in order to accommodate the occasional, inconvenient and unusual traffic capacity ... ." While this rationale might justify a determination that the traffic impacts are significant and unavoidable on the basis that mitigation is impractical, it cannot justify the omission of the required impact analysis altogether.

B. The Response to Comments Fails to Adequately Respond to Comments Regarding the Understatement of Traffic Impacts as a Result of Failing to Apply Any Significance Criteria.

As detailed in the Comment Letter, although the DSEIR identifies LOS significance thresholds, it fails to apply these thresholds on the basis that Downtown is exempt from the City LOS Policy. As a result, the DSEIR fails to disclose significant traffic impacts.

Master Response 1 defends the DSEIR's approach to Downtown LOS by citing to the Downtown Strategy 2000 Plan EIR, which "identified significant and unavoidable LOS deficiencies" at several Downtown intersections. Master Response 1 points out that "[t]hese significant and unavoidable impacts were subject to a statement of overriding considerations by the City Council at that time in accordance with the General Plan Policy that exempts downtown intersections from mitigation ... ." The Master Response in fact supports our point: LOS deficiencies are significant, unavoidable impacts that must be disclosed. While the City may be willing to accept such significant impacts as a matter of City transportation policy, such policy does not, and cannot, excuse the City from identifying significant impacts as required by CEQA.

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In order to comply with CEQA, the DSEIR must disclose the significant LOS deficiencies that the Baseball Stadium would cause or contribute to. The DSEIR must identify feasible mitigation measures, and if the Downtown LOS Policy renders mitigation infeasible, the DSEIR must identify the impact as significant and unavoidable, and the City must adopt a statement of overriding considerations for the Baseball Stadium. If the City intends to incorporate the analysis of the Downtown Strategy 2000 Plan EIR, the DSEIR must say so, and the City must analyze whether, as a result of the addition of the Baseball Stadium (as well as other project changes, new information and changed circumstances), these impacts would be substantially more severe than indicated in the Downtown Strategy 2000 Plan EIR. The Response to Comments does none of these things.

C. The Response to Comments Does Not Adequately Respond to Comments Regarding the Understatement of Traffic Impacts.

The Comment Letter notes that the DSEIR understates traffic impacts as a result of its failure to quantify the number of cars that will circle the Downtown area searching for parking for simultaneous events. Response to Comment C7-35 responds with a conclusory statement that "the DSEIR does not suggest that searching for parking would be a project impact." In fact, however, the City's *Diridon Station Area Plan Existing Conditions Report* acknowledges that, when there is insufficient parking in the downtown area, "drivers will resort to 'cruising' for parking or may be tempted to park illegally – activities that can create significant traffic impacts." See *Diridon Station Area Plan Existing Condition Report*, Chapter 7, p. 7-8 (emphasis added). The Response to Comments fails to provide good faith, reasoned analysis as to why patrons circling for parking could not cause an impact.

D. The Response to Comments Fails to Adequately Respond to Comments Regarding the Understatement of Traffic Impacts as a Result of Relying on the Proposed Autumn Street Extension.

As identified in the Comment Letter, the DSEIR's reliance on the future extension of Autumn Street to accommodate project traffic is not supported by substantial evidence. The Traffic Impact Analysis included as Appendix C to the DSEIR (the "TIA") assumes, *as part of background conditions*, that the extension of Autumn Street to Coleman Avenue, north of HP Pavilion, is completed. The Comment Letter established that this assumption is not supported by substantial evidence because the extension project is not fully funded, the City has not acquired the necessary right-of-way, and there are no assurances that this assumed improvement will be funded and constructed prior to operation of the Baseball Stadium.

Responses to Comments C7-40 and C11-21 acknowledge that the Autumn Street extension is only partially funded and not all of the right-of-way has been acquired. Response to Comment C11-21 makes the unsupported, conclusory assertion that "completion of the construction of the Autumn Street extension would occur prior to operation of a ballpark project." To the contrary, however, Response to Comments C7-40 and C11-21 concede that "[a]dditional environmental review would be required if the City were to plan to open the ballpark prior to

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completion of the Autumn Street extension." In other words, completion of the Autumn Street extension prior to Baseball Stadium operation is *not* assured.

Both the assessment of the impacts of the Baseball Stadium against hypothetical future baseline conditions (rather than reasonably foreseeable baseline conditions), and the deferral of analysis of the impacts of the Baseball Stadium without the Autumn Street extension until an unspecified date *after* project approval violate CEQA. See *Woodward Park Homeowner's Ass'n v. City of Fresno* (2007) 150 Cal.App.4<sup>th</sup> 683, 707 (EIR invalidated on basis that it compared project impacts to hypothetical future development rather than existing conditions). Moreover, the City cannot mitigate potential traffic impacts by conditioning approval of the Baseball Stadium such that it cannot proceed without prior completion of the Autumn Street extension. See *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4<sup>th</sup> 182, 205-206 ("It is not mitigation of a significant environmental impact on a project to say that if the impact is not addressed then the project will not be built. ... [I]t must be borne in mind that the EIR must address the project and assumes the project will be built.") Accordingly, the City must revise and recirculate the DSEIR to disclose, *before* project approval, the impacts of opening the Baseball Stadium in advance of completion of the Autumn Street extension.

E. The Response to Comments Does Not Adequately Respond to Comments Regarding the Understatement of Traffic Impacts as a Result of Failing to Analyze Impacts at the Intersection of The Alameda and Race Street.

The Comment Letter questions the DSEIR's failure to analyze project impacts at the intersection of The Alameda and Race Street. Response to Comment C7-13 defends this omission on the basis that the 2007 EIR found impacts to this intersection to be less than significant. Given that the DSEIR presented an entirely new TIA, which reflects changed circumstances since the 2007 EIR, reliance on the 2007 EIR traffic analysis is misplaced. Response to Comment C7-42 further defends the omission on the basis that *fans traveling to the Baseball Stadium* would drive to parking locations and therefore not use this intersection. As indicated in Comment C7-42, however, *fans traveling to HP Pavilion* may use this intersection to avoid congested areas on Bird and Autumn Street during simultaneous events. The Response to Comments fails to provide a reasoned, good faith analysis of potential impacts at The Alameda and Race Street.

F. The Response to Comments Does Not Adequately Respond to Comments Regarding the Understatement of Traffic Impacts as a Result of Failing to Adequately Analyze Impacts Associated with Park Avenue Narrowing.

As stated in the Comment Letter, narrowing at the Autumn Street and Park Avenue intersection would reduce the capacity of this intersection by approximately 40 percent. This reduced capacity will significantly and adversely impact access to HP Pavilion even when *no* events are occurring at the Baseball Stadium. Master Response 3 defends the DSEIR's analysis of the proposed narrowing by claiming that the level of service at this intersection "could be improved to LOS D with the provision of wider crosswalks and temporary left-turn restrictions, with either two lanes or four lanes on Park Avenue." However, neither the DSEIR nor the Response to Comments demonstrate that wider crosswalks would provide sufficient capacity and safety for pedestrians, nor

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do they address the impacts on other roadways and intersections that would be created by the proposed left-turn restrictions. Similarly, the assertion in Master Response 3 that the City has either approved or is planning various other traffic improvements in the Diridon Station area does not address capacity on Park Avenue, because such improvements were previously accounted for in the DSEIR's automobile trip projections. Moreover, the Autumn Street and SR 87/Julian Street interchange improvements would serve trips to and from the north, rather than trips to and from the south served by the Autumn Street/Park Avenue intersection. Accordingly, Master Response 3 does not provide the reasoned response required by CEQA.

G. The Response to Comments Does Not Adequately Respond to Comments Regarding the Understatement of Traffic Impacts as a Result of Failure to Analyze Demolition and Construction Traffic Impacts.

The Comment Letter notes that the DSEIR understates potentially significant transportation impacts by failing to identify impacts that will occur during demolition and construction of the Baseball Stadium, from actions such as street closures and traffic diversions, particularly if Montgomery Street is closed before the Autumn Street extension is open. Response to Comment C7-43 asserts only that construction will generate substantially fewer trips and less parking demand than operation of the Baseball Stadium. The Response to Comments further claims that "[s]pecific construction operations requirements, such as construction hours and truck haul routes, will be prescribed and included as conditions of subsequent discretionary development permits." This response fails to respond to the request that the DSEIR analyze street closures, traffic diversions and phasing plans. CEQA does not permit this analysis to be deferred to future actions that will occur after approval of the Baseball Stadium. See 14 Cal. Code Regs. § 15064(d)(1) (In evaluating the significance of the environmental effect of the project, the lead agency must consider direct physical changes in the environment which may be caused by the project, such as "dust, noise, and traffic of heavy equipment that would result from construction.")

II. The Response to Comments Fails to Adequately Respond to Comments Regarding the Understatement of Parking Impacts.

A. The Response to Comments Fails to Adequately Respond to Comments Regarding the City's "Non-Viability" Parking Significance Criterion.

Master Response 4 and Response to Comment C7-44 defend the DSEIR's "non-viability" interpretation of the parking significance criterion on the basis that recent amendments to the CEQA Checklist delete text asking if a project would result in an inadequate parking supply. This response fails to acknowledge that the City's own thresholds of significance requires a determination that a significant impact will occur if the project will "result in inadequate parking for existing land uses or cause parking intrusion into existing residential neighborhoods." See DSEIR, pp. 45-46. The City must apply its own significance criterion, stated in the DSEIR, in a manner that complies with CEQA. For the reasons stated in the Comment Letter, the "non-viability" interpretation adhered to in the DSEIR does not comply with CEQA. Alternatively, if the Response to Comments is intended to suggest that the City is now deleting its parking significance criterion and taking the position that inadequate parking is not a significant impact, then the public has been



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denied a meaningful opportunity to comment on this approach, and the DSEIR must be recirculated.

B. The Response to Comments Fails to Adequately Respond to Comments Regarding the Overstatement of Parking Supply.

The DSEIR assumes that 25 percent of area parking is occupied at the time of a weekday baseball game, based on an extrapolation of 2005 data indicating that 50 percent of then-free (but now paid) City lots and 5 percent of paid private lots are occupied. Master Response 4 provides updated 2009/2010 parking survey data for now-paid City parking lots, indicating that 31 percent of paid City lots are occupied. Master Response 4 asserts that the 2009/2010 data demonstrate that the 2005 data were conservative, in that the parking occupancy rate at City garages is lower today than in 2005. This response, however, fails to account for the likely rise in occupancy rates at privately owned garages that has occurred since the City began charging for parking. Now that all downtown lots charge for parking, there is no incentive for drivers to choose to park at City lots instead of private lots. Instead, it would be reasonable to assume that paid private lots would have the same occupancy as paid City lots. If so, the 25 percent occupancy rate used in the DSEIR would understate the actual 31 percent occupancy rate, resulting in an overstatement of available parking supply, and therefore an even greater parking shortage.

The Response to Comments also reaches several conclusions regarding parking supply based on assumptions that are not supported by substantial evidence. For example, Master Response 4 suggests that arrangements can be made with the owners of private parking lots to accommodate the number of spaces required to satisfy the City's contractual obligation to provide parking for HP Pavilion patrons. This response acknowledges, however, that management of those facilities may not agree to such an arrangement. Similarly, the Response to Comments suggests that increased demand for downtown parking would lead to the provision of more private parking spaces, but provides no substantial evidence to support this suggestion, particularly given that some private lot owners have declined to open for HP Pavilion events. Finally, the Response to Comments claims that the 85 to 90 percent operational efficiency of parking lots typically assumed by traffic engineers "is not intended to apply to special events." In fact, none of the cited sources contain such a caveat, and the City's own *Diridon Station Area Plan Existing Conditions Report* states that "[a] parking occupancy rate of 85 percent is typically defined as 'practical capacity' meaning that it has reached a balance between supply and demand where there are sufficient empty spaces to assure parking availability." By relying on speculation unsupported by substantial evidence, the Response to Comments fails to provide the reasoned response required by CEQA.

C. The Response to Comments Fails to Adequately Respond to Comments Regarding the DSEIR's Omission of Any Cumulative Parking Analysis.

As noted in the Comment Letter, the DSEIR fails to include *any* cumulative parking analysis. Master Response 4 asserts that "it would be inappropriate to speculate on the provision of parking supplying downtown San Jose in the future." Speculation would be inappropriate, but as noted in the Comment Letter, CEQA does mandate that the City make reasonable forecasts, and use its best efforts to disclose all that it reasonably can. Here, the City has not made *any* effort to

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disclose the likely parking demand from cumulative development (not even from General Plan buildout, let alone the pending BART project, High Speed Rail project (the "HSR Project"), and Diridon Station Area Plan (the "Diridon Plan") (which are more specifically addressed in Part IV below)). Moreover, the Response to Comments fails to provide any reasoned analysis as to why such reasonable forecasts have not been undertaken.

III. The Response to Comments Does Not Adequately Respond to Comments Regarding the Failure to Identify and Mitigate Significant Emergency Access Impacts Resulting from Traffic Congestion.

As noted in the Comment Letter, the DSEIR indicates that Downtown intersections will experience significant congestion under some project level and cumulative scenarios, yet the DSEIR fails to evaluate the impact of these conditions on emergency response times within the Downtown area before and after baseball games. Response to Comment C7-18 claims there will be no impact because emergency vehicles can use sirens to clear a path, and most Downtown signals have preemption so that emergency vehicles can trigger a green light whenever they come through. This response, however, fails to consider that such measures will be ineffective when Downtown streets are congested with automobiles, buses, shuttles and pedestrians. Emergency sirens and preempted signals are of no value when there are vehicles and people blocking the streets.

IV. The Response to Comments Fails to Adequately Respond to Comments Regarding the Inadequacy of the DSEIR Cumulative Impact Analysis.

A. The Response to Comments Does Not Adequately Respond to Comments Regarding the DSEIR's Failure to Address Probable Future Projects, Including the High-Speed Rail Project and the Diridon Station Plan.

The Comment Letter explains CEQA's requirement that an EIR make reasonable forecasts, and that a lead agency must use best efforts to find out and disclose all that it reasonably can. Master Response 6 acknowledges that the HSR Project and the Diridon Plan are reasonably foreseeable projects, but defends the omission of quantitative cumulative impact analysis of these projects on the grounds that it would be speculative. Master Response 6 fails to explain why forecasting is not possible. In the case of the HSR Project, Master Response 6 indicates that the original parking demand estimate of 9,800 spaces has been revised to 3,800 spaces. Likewise, with respect to the Diridon Plan, Master Response 6 acknowledges that three project alternatives have been identified, from which the City could forecast a range of parking demand. Yet despite the availability of this quantitative information, the DSEIR fails to provide *any* cumulative parking analysis.

The Comment Letter explains CEQA's requirement that cumulative impact analysis include projects where the applicant has devoted substantial time and resources to prepare for regulatory review, generally indicated by the *commencement* of environmental review. Master Response 6 responds that the DSEIR was in circulation before the revised HSR Project Program EIR. This response is misleading, however, because the revised HSR Project Program EIR did not change the transportation analysis contained in the original HSR Project Program EIR, which

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circulated well before the DSEIR. Master Response 6 further responds that the Diridon Plan is too speculative to analyze. San Jose has contractually committed itself to conducting environmental review of this foreseeable project, has committed financial resources towards its ultimate development, and has conducted multiple community workshops to receive input on the three Diridon Plan alternatives. These actions represent the commitment of substantial time and resources, such that analysis is required.

B. The Response to Comments Does Not Adequately Respond to Comments Regarding the DSEIR's Failure to Consider Cumulative Transit Impacts.

The Comment Letter notes that the DSEIR does not include *any* cumulative transit impact analysis. Master Response 6 suggests that "[t]here is no evidence that under the cumulative conditions there would be a significant impact on transit since two of the cumulative projects (HSR and BART) would actually increase transit service to the project area." As indicated in VTA's comments, however, "vehicular and pedestrian traffic generated by the proposed stadium has the potential to impact nearby bus and shuttle operations"; "stadium generated transit usage [may impact] VTA light rail system operations and capacity; and proposed roadway modifications could affect light rail crossings. Responses to Comments B5-11 and B5-12 acknowledge that the Baseball Stadium may increase light rail demand and impact light rail crossings, but rely on the development of a TPMP after project approval to mitigate such impacts. As for the project's impact on bus and shuttle service, Response to Comment B5-3 asserts that no impact to bus and shuttle service will occur because routes will remain open, but fails to consider the impact of project traffic on bus and shuttle headway regularity. By deferring the analysis of the project's impact on transit operations until after project approval, and by failing to account for the project's traffic impacts on bus and shuttle service, the Response to Comments fails to provide the reasoned analysis required by CEQA.

C. The Response to Comments Does Not Adequately Respond to Comments Regarding the DSEIR's Failure to Consider Cumulative Pedestrian Impacts.

The Response to Comments defends the DSEIR reliance on the cumulative pedestrian impacts analysis of the 2007 EIR on the basis that the revised project considered in the DSEIR proposes fewer seats than the project considered in the 2007 EIR. The Response to Comments and the DSEIR, however, fail to account for the DSEIR's updated traffic counts, updated Approved Trip Inventory, and changes in probable future projects included in its cumulative scenario description (including the future BART and HSR projects). Accordingly, the Response to Comments fails to provide the reasoned response required by CEQA.

The foregoing examples illustrate how the Response to Comments fails to adequately respond to the significant environmental concerns raised in the DSEIR. For these reasons and the reasons articulated in the Comment Letter, the DSEIR must be revised to disclose the significant environmental impacts of the Baseball Stadium, and to identify feasible measures to mitigate those impacts, and be recirculated for meaningful public review.

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On behalf of Silicon Valley Sports, we appreciate the opportunity to comment on the Response to Comments. Silicon Valley Sports reserves its right to submit additional comments as additional relevant information becomes available.

Respectfully submitted,

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EXHIBIT A

SCHEDULING CONFLICTS BETWEEN EVENTS  
AT OAKLAND COLISEUM AND HP PAVILION  
(attached)



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April 12, 2010

### SCHEDULING CONFLICTS BETWEEN EVENTS AT OAKLAND COLISEUM AND HP PAVILION

DATE	STADIUM			HP PAVILION			SUMMARY DESCRIPTION OF ANTICIPATED CONFLICTS WERE THE OAKLAND COLISEUM LOCATED IN THE DIRIDON STATION AREA
	EVENT	START TIME	END TIME	EVENT	START TIME	END TIME	
2/28/09	Monster trucks	7:00	NA	Disney on Ice	11:30 3:30 7:30	NA NA 9:39	For last event, HP customers experience congestion when arriving and leaving and have difficulty finding parking
4/11/09	Baseball	1:05	4:02	Strikeforce	4:59	9:12	When arriving, HP customers experience congestion due to customers leaving stadium
6/06/09	Baseball	6:05	8:47	Andrea Bocelli	8:14	10:32	HP customers have difficulty finding parking
6/10/09	Baseball	7:05	9:48	San Jose Unified Schools	9:00 am	9:00 pm	HP customers leaving during 6-7 pm experience congestion with customers arriving at stadium. HP customers arriving during the early evening period experience congestion with customers arriving at stadium and have difficulty finding parking.
6/27/09	Baseball	6:05	9:49	Univ. of Phoenix	10:02 am	6:30 pm	HP customers arriving during late afternoon experience congestion with customers arriving at stadium and have difficulty finding parking. HP customers leaving during late afternoon experience congestion.
6/29/09	Baseball	7:05	9:41	WWE	5:30	11:00	Limited conflicts
7/16/09	Baseball	7:05	9:33	Fight Night	7:50	10:17	HP customers experience congestion when arriving and have difficulty finding parking
7/21/09	Baseball	7:05	9:53	EWF	7:53	10:55	HP customers experience congestion when arriving and have difficulty finding parking
8/03/09	Baseball	7:05	9:52	Jonas Bros.	7:30	10:30	HP customers experience congestion when arriving and leaving and have difficulty finding parking
8/04/09	Baseball	7:05	9:39	Evening with Rod	8:00	10:10	HP customers have difficulty finding parking and experience congestion when leaving.
8/15/09	Baseball	1:05	3:51	Strikeforce	5:30	9:11	When arriving, HP customers experience congestion due to customers leaving stadium
8/18/09	Baseball	7:05	9:59	Green Day	7:30	10:52	HP customers experience congestion when arriving and have difficulty finding parking
8/19/09	Baseball	7:05	9:44	Ringling Bros.	7:33	9:56	HP customers experience congestion when arriving and leaving and have difficulty finding parking
8/21/09	Baseball	7:05	9:59	Ringling Bros.	7:31	9:51	HP customers experience congestion when arriving and leaving and have difficulty finding parking
8/22/09	Baseball	6:05	8:38	Ringling Bros.	10:54 3:30 7:30	NA NA 9:15	For second event, HP customers experience congestion when leaving. For last event, HP customers have difficulty finding parking
8/23/09	Baseball	1:05	3:56	Ringling Bros.	10:58 3:30 7:30	NA NA 9:13	For first event, HP customers experience congestion when leaving. For second event, HP customers have difficulty finding parking
9/17/09	Baseball	7:05	9:55	Pink	7:50	11:00	HP customers experience congestion when arriving and have difficulty finding parking
9/18/09	Baseball	7:05	9:30	Sharks exh.	7:38	9:57	HP customers experience congestion when arriving and leaving and have difficulty finding parking
4/01/08	Baseball	7:07	9:46	Sharks	7:39	9:55	HP customers experience congestion when arriving and leaving and have difficulty finding parking

**Scheduling Conflicts Between Events  
At Baseball Stadium and HP Pavilion**

April 12, 2010

DATE	STADIUM			HP PAVILION			SUMMARY DESCRIPTION OF ANTICIPATED CONFLICTS WERE THE OAKLAND COLISEUM LOCATED IN THE DIRIDON STATION AREA
	EVENT	START TIME	END TIME	EVENT	START TIME	END TIME	
4/02/08	Baseball	7:07	10:07	Bon Jovi	7:32	10:50	HP customers experience congestion when arriving and leaving and have difficulty finding parking
4/04/08	Baseball	7:07	9:56	RBD	8:04	10:45	HP customers have difficulty finding parking
4/06/08	Baseball	1:07	3:44	Stealth	4:07	6:20	When arriving, HP customers experience congestion due to customers leaving stadium
4/12/08	Soccer	7:00	NA	SaberCats	7:35	10:12	HP customers experience congestion when arriving and leaving and have difficulty finding parking
4/17/08	Baseball	7:07	9:29	Sharks	7:05	9:37	HP customers experience congestion when arriving and leaving and have difficulty finding parking
4/18/08	Baseball	7:07	9:45	Stealth	7:36	9:42	HP customers experience congestion when arriving and leaving and have difficulty finding parking
4/22/08	Baseball	7:07	9:51	Sharks	7:09	9:38	HP customers experience congestion when arriving and leaving and have difficulty finding parking
4/23/08	Baseball	7:07	9:25	Sharks	7:00	9:46	HP customers experience congestion when arriving and leaving and have difficulty finding parking
5/02/08	Baseball	7:07	9:48	Sharks	7:10	9:50	HP customers experience congestion when arriving and leaving and have difficulty finding parking
5/03/08	Baseball	6:07	8:39	Michael Buble	8:00	10:35	HP customers have difficulty finding parking
5/04/08	Baseball	1:07	3:40	Stealth	3:08	5:09	HP customers have difficulty finding parking
5/20/08	Baseball	7:07	9:49	State of Sharks	7:00	10:00	HP customers experience congestion when arriving and leaving and have difficulty finding parking
5/24/08	Baseball	6:07	8:24	SaberCats	7:35	10:07	HP customers have difficulty finding parking
5/28/08	Baseball	7:07	9:38	The Cure	7:30	11:39	HP customers experience congestion when arriving and have difficulty finding parking
6/06/08	Baseball	7:07	9:20	Kanye West	7:01	11:43	HP customers experience congestion when arriving and have difficulty finding parking
6/11/08	Baseball	7:07	9:51	San Jose Unified Schools	1:10	8:00	HP customers arriving during 6-7 experience congestion and difficulty finding parking. HP customers leaving during 6-7 experience congestion.
6/12/08	Baseball	7:07	9:37	Wild Jam	7:30	10:30	HP customers experience congestion when arriving and have difficulty finding parking
6/14/08	Soccer	7:00	NA	SaberCats	7:34	10:25	HP customers experience congestion when arriving and have difficulty finding parking
6/21/08	Baseball	6:07	9:02	SaberCats	7:35	10:10	HP customers have difficulty finding parking
6/27/08	Baseball	7:07	9:51	Strikeforce	6:30	11:30	HP customers experience congestion when arriving and leaving and have difficulty finding parking
6/28/08	Baseball	6:07	8:37	Univ. of Phoenix	2:10	4:25	Limited conflicts
7/08/08	Baseball	7:07	8:56	American Idols	7:15	10:10	HP customers experience congestion when arriving and have difficulty finding parking
9/11/08	Baseball	7:07	9:53	Fight Night	7:47	9:59	HP customers experience congestion when arriving and leaving and have difficulty finding parking
9/19/08	Baseball	7:07	9:12	Joyce Meyers Ministries	10:01 am	9:29 pm	HP customers arriving during 6-7 experience congestion and difficulty finding parking. HP customers leaving during 6-7 and at end of event experience congestion.
9/20/08	Baseball	1:07	3:52	Joyce Meyers Ministries	9:45 am	12:18 pm	When leaving, HP customers experience congestion with customers arriving at stadium
9/21/08	Baseball	1:07	3:29	USAG Gymnastics	5:11	7:07	Limited conflicts